

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 65. LANDOWNER COMPENSA- TION PROGRAM

The Office of the Attorney General (OAG) proposes new Chapter 65 in Title 1 of the Texas Administrative Code (TAC), relating to the Landowner Compensation Program. Proposed new Chapter 65 consists of Subchapter A, §§65.1 and §65.2, Scope, Construction, and Definitions; Subchapter B, §§65.200 - 65.203, Program Guidelines; Subchapter C, §§65.300 - 65.307, Application for Compensation; and Subchapter D, §§65.400 - 65.402, Administrative Remedies. Proposed new Chapter 65 is necessary to implement the Landowner Compensation Program in Chapter 56C, Texas Code of Criminal Procedure.

EXPLANATION OF AND JUSTIFICATION RULES

The Legislature, in the 88th Regular Session (2023), added Chapter 56C to the Code of Criminal Procedure (S.B. 1133) which establishes the Landowner Compensation Program (LCP). The purpose of the LCP is to compensate certain landowners who suffer real property damage on agriculture land as a result of certain acts in connection with a border crime.

Senate Bill 1133 provides that the OAG shall establish: Eligibility for compensation, application procedures, criteria for evaluating application and awarding compensation, guidelines for compensation amounts not to exceed \$75,000 per incident, and procedures for monitoring the use of awarded compensation.

Proposed new Chapter 65 is necessary to implement Chapter 56C and Contingency Rider Section 18.03, General Appropriations Act (GAA) for Fiscal Years 2024-2025, which appropriates funds to create and administer the LCP. Chapter 56C, Code of Criminal Procedure, as added by S.B. 1133 will expire on the second anniversary of the date that the money appropriated for the LCP has been expended.

SECTION-BY-SECTION SUMMARY

Proposed new Chapter 65 adds new Subchapter A - Scope, Construction, and Definitions.

Proposed new §65.1, outlines the authority, scope, and construction of the rules and law establishing the LCP.

Proposed new §65.2, defines the following terms: "Agriculture land," "Agriculture use," "Application," "Border crime," "Claimant," "Closed application," "Collateral source," "Incident," "Landowner," "Law enforcement agency," "LCP," "OAG," "Real property," "Report," and "Trespasser."

Proposed new Chapter 65 adds new Subchapter B - Program Guidelines.

Proposed new §65.200 outlines claimant eligibility requirements, the administration of the program, and compensation and award limits. The eligibility requirements are consistent with Chapter 56C and require that a claimant submit an application in accordance with proposed new Chapter 65. Proposed new §65.200 also establishes that real property damage for which an applicant files a claim must have occurred on or after September 1, 2023.

Proposed new §65.201 establishes that the OAG may award compensation to claimants that the OAG determines have met all eligibility requirements outlined in §65.200. Proposed new §65.201 also establishes parameters the OAG may use to determine the amount of compensation that will be awarded to a claimant who the OAG determines is eligible to receive compensation under the LCP.

Proposed new §65.202 establishes the types of real property repairs for which the OAG may award compensation and how the rates will be set, published, and reviewed. New §65.202 also establishes a maximum compensation amount of \$75,000, which is consistent with Chapter 56C, and states that applications for \$15 or less will not be considered.

Proposed new §65.203, establishes procedures that the OAG may use to monitor a landowner's use of compensation awarded under the LCP.

Proposed new Chapter 65 adds new Subchapter C - Application for Compensation.

Proposed new §65.300 establishes the application requirements a claimant must meet to be eligible for compensation under the LCP.

Proposed new §65.301 states that claimants must submit applications for compensation no later than 95 days after the date the incident occurred. The OAG has the discretion to extend the time frame for filing an application.

Proposed new §65.302, requires the claimant report an incident to the appropriate state or local law enforcement agency within a reasonable time period as determined by the OAG.

Proposed new §65.303 outlines when an application may be denied or closed. The OAG may reconsider an application that has been closed. The OAG will not reconsider an application that has been denied. However, a claimant may reapply for compensation based on the same incident for which a previous application has been denied if the claimant discovers new relevant information.

Proposed new §65.304 establishes that the OAG is the payer of last resort pursuant to §56C.006 of the Code of Criminal Pro-

cedure. Proposed new §65.304 provides that the OAG will not award compensation where another collateral source is or was available to compensate the landowner for real property damage that otherwise qualified for compensation under the LCP. Proposed new §65.304 also establishes that the OAG may consider the availability of collateral sources to determine, award, deny, or reduce compensation.

Proposed new §65.305 establishes that the OAG may require a refund from a claimant if the claimant applied for compensation on the basis of fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation. The OAG may also pursue available administrative or civil penalties in addition to seeking a refund upon determining that compensation was awarded based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

Proposed new §65.306 provides that the OAG will not exceed the amount of money appropriated for compensation under the LCP and available funds will be awarded in a priority deemed appropriate by the OAG.

Proposed new §65.307 provides that the OAG has authority to transmit the submission of notices, forms, and other documentation electronically and also may require a claimant to do so.

Proposed new Chapter 65 adds new Subchapter D - Administrative Remedies.

Proposed new §65.400 outlines procedures to request a reconsideration of an application or award under the LCP.

Proposed new §65.401 outlines the prehearing conference requirements.

Proposed new §65.402 outlines the hearing procedures.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Ryan Fisher, Chief of the Crime Victim Services Division, has determined that for each year of the first five years the proposed rules are in effect, there will be an anticipated additional cost to the state General Revenue Funds, estimated at \$18,000,000 for the first fiscal year and \$18,000,000 for the second fiscal year.

The additional cost to the state was considered in the fiscal note for S.B. 1133, which amended the Texas Code of Criminal Procedure by adding Chapter 56C. Senate Bill 1133 grants the OAG the ability to adopt rules, establish, and administer the Landowner Compensation Program.

The General Appropriations Act for Fiscal Year 2024-2025 appropriated \$18 million per fiscal year for two years, totaling \$36 million, with administrative costs of \$342,617 per year included in the amount to implement S.B. 1133. Because the LCP is a new program, an accurate forecast of compensation payouts and operating costs is not possible.

Chapter 56C of the Code of Criminal Procedure, as added by S.B. 1133, will expire on the second anniversary of the date the money appropriated for the Landowner Compensation Program has been expended.

Mr. Fisher has determined that there will be no additional costs to local government, no estimated reductions in costs to state or local government, and no estimated increase in revenue or estimated losses in revenue to state or local government.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Fisher has determined that the proposed rules do not have an impact on local employment or economies because the proposed rules impact landowners. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

PUBLIC BENEFITS

Mr. Fisher has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be to the landowners who have suffered real property damage on agriculture land as a result of certain acts in connection with a border crime. Eligible claimants will receive compensation, an award amount of up to \$75,000 per incident, for their losses. The compensation will allow for financial recovery for damage caused by trespassing on agricultural land or related to border crimes if compensation from other collateral sources is not available to the landowner.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Fisher has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. Senate Bill 1133 amended the Texas Code of Criminal Procedure adding Chapter 56C, which establishes the Landowner Compensation Program, to assist those affected by border crime on agricultural land to be eligible to receive compensation for real property damage. Those identified as affected by the proposed rules are potential claimants who may be eligible for compensation. Enforcing or administering the proposed rules do not have foreseeable economic costs to those claimants.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Mr. Fisher has determined that for each year of the first five-year period the proposed rules are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules.

Since the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. Proposed new chapter 65 creates a new government program. Senate Bill 1133 creates a government program called Landowner Compensation Program and appropriates General Revenue Funds to the OAG for two years to administer the program.
2. Implementation of proposed new chapter 65 requires the OAG to create 10 new full-time employee positions. The proposed rules are necessary to implement S.B. 1133, which resulted in the creation of a new program for which implementation requires additional staff in the Crime Victims Services Division.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency. The proposed rules implement General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program. The appropriated amount for the program is \$18 million per fiscal year for two years, totaling \$36 million, with administrative costs of \$342,617 per year included in the amount. Chapter 56C, Code of Criminal Procedure, as added by S.B. 1133 will expire on the second anniversary of the date that the money appropriated for the Landowner Compensation Program has been expended. Unless continued by the Texas Legislature and funded through the General Appropriations Act, the proposed rules do not increase or decrease future legislative appropriations.

4. The proposed rules will not require an increase or decrease in fees paid to the agency.

5. The proposed rules will not create a new regulation.

6. The proposed rules will not expand, limit, or repeal an existing regulation.

7. The proposed rules increase the number of individuals subject to the rules' applicability. The proposed rules implement S.B. 1133 which creates a new Landowner Compensation Program and therefore increases the number of individuals that may be eligible to be claimants.

8. The proposed rules positively affect this state's economy. Senate Bill 1133 allows landowners who have suffered real property damage on agriculture land as a result of certain acts in connection with a border crime. Eligible claimants will receive compensation, an award amount of up to \$75,000 per incident, for their losses. This will allow for a quicker financial recovery for damage caused by trespassing on agricultural land or related to border crimes.

TAKINGS IMPACT ASSESSMENT

The OAG has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Written comments on the proposed rules may be submitted electronically to the Crime Victims Services Division by email at landowner.compensation@oag.texas.gov or by mail to Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Austin, Texas 78711.

The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. SCOPE, CONSTRUCTION, AND DEFINITIONS

1 TAC §65.1, §65.2

STATUTORY AUTHORITY

New 1 TAC Chapter 65 is proposed pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023)

which requires the OAG to adopt rules necessary to implement Chapter 56C.

Proposed new Chapter 65 is further proposed pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS REFERENCE

This regulation clarifies Texas Code of Criminal Procedure, Chapter 56C. No other rule, regulation, or law is affected by this proposed rule.

§65.1. Authority, Scope, and Construction of Rules.

This chapter applies to the administration of the Landowner Compensation for Property Damage caused by Certain Criminal Activities program pursuant to Texas Code of Criminal Procedure, Chapter 56C. The Office of the Attorney General (OAG) adopts this chapter under the authority of the Texas Code of Criminal Procedure, Chapter 56C and Texas Government Code, Chapter 402.

§65.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings:

(1) "Agricultural land" means any land the use of which qualifies the land for appraisal based on agricultural use as defined under Subchapter D, Chapter 23, Texas Tax Code.

(2) "Agriculture use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; planting cover crops or leaving land idle for the purpose of participating in a governmental program, provided the land is not used for residential purposes or a purpose inconsistent with agricultural use; and planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use. The term also includes the use of land for wildlife management. The term also includes the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, defined by the Texas Tax Code §23.51(2).

(3) "Application" means a written request for compensation under the Landowner Compensation for Property Damage caused by Certain Criminal Activities program and includes all supporting documentation that is provided for claim determination as prescribed by the OAG.

(4) "Border crime" means conduct:

(A) constituting an offense under:

(i) Subchapter D, Chapter 481 (Texas Controlled Substances Act), Health and Safety Code;

(ii) Section 20.05 (Smuggling of Persons) or 38.04 (Evading Arrest or Detention), Penal Code; or

(iii) Chapter 20A (Trafficking of Persons), Penal Code; and

(B) involving transnational criminal activity.

(5) "Claimant" means any landowner applying for any benefit under this chapter.

(6) "Closed application" means an application which has been administratively closed under this chapter.

(7) "Collateral source" means financial compensation for real property damage under a state, local, or federal funding program, or an insurance contract and may include property insurance; state funding; local funding; federal funding; or foreign consulate payments.

(8) "Incident" means an occurrence of real property damage on agricultural land caused by a trespasser as a result of an offense under Chapter 28, Penal Code, in the course or furtherance of a border crime or engaged in a border crime that has been reported to law enforcement.

(9) "Landowner" means an individual or business that owns land in the State of Texas.

(10) "Law enforcement agency" means a governmental organization that employs commissioned peace officers as defined by Texas Code of Criminal Procedure Article 2.12.

(11) "LCP" means Landowner Compensation Program.

(12) "OAG" means Office of the Attorney General.

(13) "Real Property" means agricultural land that has the meanings assigned by Texas Tax Code, §1.04(2). The term does not include crops, farm equipment, or livestock.

(14) "Report" means written documentation created or provided by a law enforcement agency in connection with an incident.

(15) "Trespasser" has the meaning assigned by Texas Civil Practice and Remedies Code §75.007.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2024.

TRD-202400427

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Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 565-8064



SUBCHAPTER B. PROGRAM GUIDELINES

1 TAC §§65.200 - 65.203

STATUTORY AUTHORITY

New 1 TAC Chapter 65 is proposed pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

Proposed new Chapter 65 is further proposed pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS REFERENCE

This regulation clarifies Texas Code of Criminal Procedure, Chapter 56C. No other rule, regulation, or law is affected by this proposed rule.

§65.200. Eligibility and Administration.

(a) The OAG shall determine the eligibility, standards, and reasonable limits on compensation for applications and payments in a manner consistent with the law and this chapter. Use of payments made under the LCP are subject to ongoing review by the OAG to ensure compliance with conditions of the awards.

(b) The following requirements must be met in order for a claimant to be eligible for compensation under the LCP:

(1) the claimant must be a landowner;

(2) the land for which the claimant submits an application for compensation under the LCP must be agricultural land;

(3) the damage for which the claimant submits an application must be real property damage caused by a trespasser as a result of an offense under Chapter 28, Texas Penal Code, that was committed in the course of or in furtherance of a border crime or a law enforcement response to a trespasser who was engaged in a border crime;

(4) the claimant must submit a written report created by a law enforcement agency stating real property damage occurred in connection with a border crime; and

(5) the landowner sought and was not eligible to receive compensation from all available collateral sources.

(c) The real property damage for which a claimant files a claim must have occurred on or after September 1, 2023.

(d) A claimant may not be eligible for compensation under the LCP if the claimant does not submit an application in accordance with this chapter.

§65.201. Program Compensation.

(a) The OAG may award compensation to claimants determined by the OAG to have met all eligibility requirements in §65.200 of this chapter.

(b) Compensation will be reduced for any portion of the otherwise eligible real property damage for which the claimant received compensation from a collateral source.

(c) Awarded compensation will be an amount the OAG determines is reasonable to restore the real property to equal value of the real property before the damage.

(d) The OAG may determine the fair market price of a cost to determine a reimbursable amount of compensation if a claimant does not, for a reasonable reason, submit proof of the actual cost for repair. The OAG has the discretion to determine whether the reason a claimant is not able to provide proof of actual cost for repair is reasonable.

§65.202. Compensation Amount Guidelines.

(a) Real property repairs are limited to the following categories:

(1) labor cost for repairs made;

(2) cost for fence repair, including materials;

(3) cost for structure repair, including materials;

(4) disposal and removal of damaged property; or

(5) any other costs the OAG determines is reasonable to restore fair market value.

(b) The OAG will set the compensation rates for costs enumerated in subsection (a) of this section in accordance with fair market value guidelines and publish the rates on the OAG's website. The OAG may periodically review and adjust the compensation rates at its discretion to ensure fair market value.

(c) The maximum amount awarded per incident will not exceed \$75,000.

(d) Applications submitted by a claimant for \$15 or less will not be considered.

§65.203. Monitoring Use of Compensation.

(a) The OAG may verify and investigate the use of compensation awarded under the LCP. Verification and investigation includes but is not limited to:

(1) verification of any documentation submitted to the OAG;

(2) review of records submitted by a claimant; or

(3) a post-award audit to verify actual charges, bills, payments, and the delivery of goods or services.

(b) The OAG may require additional supporting documentation from a claimant. The claimant must respond to the OAG's request within 10 days, unless good cause is shown.

(c) If the claimant fails to provide additional supporting documentation or the OAG determines the claimant improperly used awarded compensation, then the OAG may require a claimant to refund the awarded funds in accordance with this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2024.

TRD-202400486

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Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 565-8064



SUBCHAPTER C. APPLICATION FOR COMPENSATION

1 TAC §§65.300 - 65.307

STATUTORY AUTHORITY

New 1 TAC Chapter 65 is proposed pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

Proposed new Chapter 65 is further proposed pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS REFERENCE

This regulation clarifies Texas Code of Criminal Procedure, Chapter 56C. No other rule, regulation, or law is affected by this proposed rule.

§65.300. Application for Compensation.

(a) All communications and applications for compensation shall be submitted to the LCP in a manner and form prescribed by the OAG.

(b) An application for compensation is complete when the application:

(1) is filled out in its entirety as prescribed by the OAG;

(2) signed by the claimant;

(3) contains all relevant required documentation; and

(4) contains any other information requested by the OAG to determine eligibility.

(c) The OAG will not consider an application until the application is complete as prescribed in §65.300(b).

(d) An application must include:

(1) a written report, including an incident or claim number, by a law enforcement agency that documents the real property damage occurred in connection with a border crime;

(2) photographic evidence of the real property damage;

(3) a detailed description of the real property damage;

(4) the Texas Comptrollers of Public Accounts - Ag/Timber Registration Number; and

(5) insurance declarations or denial of coverage.

(e) The OAG may require the claimant to provide:

(1) Federal Tax Identification Number (EIN);

(2) entity formation information;

(3) the claimant's social security number;

(4) the claimant's Individual Taxpayer Number (ITIN);

(5) itemized receipts or invoices of cost for repair(s); or

(6) itemized receipts or invoices of cost for labor.

(f) If the claimant submits an application that is not complete, the OAG will notify the claimant in writing, that the application is incomplete and request additional information be provided.

(g) If the claimant does not return the completed application to the OAG within 30 days from the date generated on the OAG's request for additional information, the application may be closed in accordance with §65.303 of this chapter.

§65.301. Timely Filing an Application.

(a) An application must be submitted with the OAG no later than 90 days from the date of an incident.

(b) The OAG may extend the time for filing an application upon good cause shown by the claimant. Good cause, as determined by the OAG, may include the following circumstances:

(1) The claimant was not reasonably aware of the LCP;

(2) Extenuating circumstances prevented the claimant from filing in a timely manner; or

(3) Any other circumstance that the OAG considers significant.

§65.302. Law Enforcement Report.

(a) A claimant must report an incident to the appropriate law enforcement agency within a reasonable period as determined by the OAG in order to be eligible for compensation under the LCP.

(b) The OAG may extend the time for reporting an incident to law enforcement if the OAG determines that the extension is justified by extraordinary circumstances.

(c) The report must include the location of the incident.

§65.303. Denial or Closure of an Application.

(a) The OAG will deny compensation under this article if:

(1) real property damage was not caused by a trespasser committing a border crime on agricultural land;

(2) the claimant was eligible for reimbursement from another collateral source and failed to seek reimbursement from the collateral source prior to submitting an application;

(3) the claimant did not meet the requirements for eligibility under this chapter; or

(4) the claimant knowingly or intentionally provided false or fraudulent information or supporting documentation to the OAG.

(b) An application for compensation may be closed at the discretion of the OAG if any of the following conditions occurs:

(1) No written report by a law enforcement agency was obtained;

(2) The claimant fails to respond within a 30-day period to a request made by the OAG for additional information as required by §65.300;

(3) The OAG is unable, within 30 days of receiving an application, to obtain information substantiating the incident;

(4) The claimant fails to report that the claimant received or was eligible to receive compensation through a collateral source;

(5) The 30-day time period for appealing the decision of the OAG to award or deny an application has passed without a request from the claimant for reconsideration;

(6) The 30-day time period for appealing the reconsideration has passed without a request from the claimant for a hearing;

(7) The 40-day period has passed for filing a written notice of dissatisfaction with the OAG's final decision; or

(8) The 40-day period has passed to bring suit in district court after filing a written notice of dissatisfaction with the OAG's final decision.

(c) The OAG may reopen an application that has been closed at its discretion upon written request from a claimant that establishes good cause.

(d) The OAG will not reopen an application that has been denied. A claimant may not reapply for compensation for an incident.

§65.304. Collateral Sources.

(a) The LCP is the payer of last resort, and the OAG will not award compensation to a claimant if the OAG determines the claimant is or was eligible for reimbursement from any available collateral source or failed to seek reimbursement from an available collateral source.

(b) The OAG may deny or reduce the compensation if the OAG notifies the claimant of a possible reimbursement amount from

any available collateral source, and the claimant fails to apply or pursue the compensation within a reasonable time frame as determined by the OAG. The acceptable time frame will be determined by the OAG upon consideration of all relevant facts and circumstances.

(c) A claimant must seek compensation from any available collateral sources prior to submitting a claim to the OAG, when reasonably possible.

(d) Unless good cause is shown, if a claimant receives compensation from a collateral source, the claimant must report the compensation amount and the source to the OAG before the claimant will be eligible to receive compensation. If a claimant is awarded compensation by a collateral source after the OAG awarded compensation under the LCP, the claimant must notify the OAG of the amount and the source of the collateral source within 10 business days of becoming aware of the compensation from a collateral source.

(e) If the claimant fails to utilize any available collateral source for all or a portion for real property damage, the OAG may deny or reduce an award under the LCP.

(f) Gifts, donations, or charitable contributions made directly to a claimant are not a collateral source and may not reduce the determination of the actual real property damage incurred by the claimant.

§65.305. Refunds from Claimants.

(a) The OAG may require a refund from a claimant if any compensation was awarded under the LCP based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

(b) The OAG may require the claimant to refund any overpayment in full or in installments or reduce future or pending payments by the amount of the overpayment.

(c) The OAG may discontinue or suspend all current and future payments to a claimant from whom the OAG has requested a refund.

(d) The OAG may pursue available administrative or civil penalties in addition to seeking a refund upon determining that compensation was awarded based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

§65.306. Insufficient Funds.

The OAG will not exceed the amount of money appropriated for compensation and available funds will be awarded in a priority deemed appropriate by the OAG.

§65.307. Use of the Electronic Communication.

(a) The OAG may send a claimant any notices, forms, or other documentation and information by electronic means.

(b) The OAG may require a claimant to submit notices, forms, or other documentation and information by electronic means, unless good cause is shown.

(c) In accordance with the Uniform Electronic Transactions Act, Texas Business and Commerce Code, Chapter 322, a notice, form, record, or signature may not be denied legal effect or enforceability solely because it is in electronic form.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2024.

TRD-202400487
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Earliest possible date of adoption: March 17, 2024
For further information, please call: (512) 475-4291



SUBCHAPTER D. ADMINISTRATIVE PENALTIES

1 TAC §§65.400 - 65.402

STATUTORY AUTHORITY

New 1 TAC Chapter 65 is proposed pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

Proposed new Chapter 65 is further proposed pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS REFERENCE

This regulation clarifies Texas Code of Criminal Procedure, Chapter 56C. No other rule, regulation, or law is affected by this proposed rule.

§65.400. Request for Reconsideration of Adverse Action.

(a) A claimant may request a reconsideration of all or any part of the OAG's decision to make or deny an award on an application or on the amount of an award.

(b) Within 30 days from the date that the OAG's office provides the claimant with the award written decision notice, the claimant must submit a signed, written request for reconsideration stating the reasons for the request for reconsideration. If the claimant fails to file a written request for reconsideration to the OAG's adverse action within the 30-day time period, the decision of the OAG becomes binding and the claimant waives the right to further appeal.

(c) The OAG may not grant a reconsideration if a request is not filed by the claimant within the 30-day time period, unless the claimant shows good cause for late filing. The claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for reconsideration of the OAG's adverse action within the 30-day time period. If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes binding and the claimant waives the right to further appeal.

(d) The OAG will provide the claimant a written notification of its reconsideration decision. If the claimant is dissatisfied with the reconsideration of the OAG's award decision, the claimant must file a signed, written request for a hearing with the OAG within 30 days of the date of the reconsideration decision. If the claimant fails to file a written request for a hearing within the 30-day time period, the reconsideration decision becomes binding and the claimant waives the right to a hearing.

(e) A claimant who fails to exhaust all available administrative remedies waives the right to seek judicial review.

§65.401. Prehearing Conference.

At any time before a hearing is conducted, the hearing officer may request a prehearing conference, either in person or by telephone, with

the claimant or his or her legal representative in order to establish whether a hearing on an application for compensation is necessary.

§65.402. Hearing.

(a) If the claimant is dissatisfied with the reconsideration decision, the claimant may file a signed, written request for a hearing.

(b) The OAG may not grant a request for a hearing if a request is not filed by the claimant within the 30-day time period, unless the claimant shows good cause for late filing. The claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for a hearing within the 30-day time period.

(c) If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes binding and the claimant waives the right to further appeal. If the OAG determines that a hearing is necessary, then the claimant will receive notice of the hearing not less than 10 days before the date of the hearing, stating the time, date, and place of the hearing.

(d) The hearing shall be conducted in Texas in a manner consistent with the law and rules adopted under this chapter.

(e) Any costs for the claimant to travel to the hearing are entirely the financial responsibility of the claimant and those costs will not be reimbursed by the OAG.

(f) Failure of the claimant to appear for the hearing may result in the entry of a final decision based upon the available record. A claimant may have the hearing rescheduled by making a request to reschedule at least two OAG business days prior to the hearing. Multiple requests for reschedule may be denied by the OAG. If a claimant fails to make a timely request to reschedule, the OAG may reschedule the hearing upon good cause shown by the claimant.

(g) The OAG will notify the claimant in writing of the final decision, including the reasons for the decision.

(h) A claimant may seek judicial review of all or any part of the final decision.

(i) In any proceeding under this subchapter, the burden of proof is upon the claimant to prove by a preponderance of the evidence that grounds for compensation exist.

(j) A claimant who fails to exhaust all available administrative remedies waives the right to seek judicial review.

(k) A final decision from the OAG may only be rendered by the OAG hearing officer after a prehearing conference, a final ruling hearing, or based on the available record.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2024.

TRD-202400488
Justin Gordon
General Counsel
Office of the Attorney General
Earliest possible date of adoption: March 17, 2024
For further information, please call: (512) 475-4291



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. MEDICAID AND OTHER
HEALTH AND HUMAN SERVICES FRAUD
AND ABUSE PROGRAM INTEGRITY
SUBCHAPTER G. ADMINISTRATIVE
ACTIONS AND SANCTIONS
DIVISION 3. ADMINISTRATIVE ACTIONS
AND SANCTIONS

1 TAC §371.1723

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Office of Inspector General (OIG), proposes in the Texas Administrative Code, Title 1, Part 15, Chapter 371, Subchapter G, Division 3, new §371.1723, concerning Recoupment of Overpayments Identified by Retrospective Payment Review.

BACKGROUND AND PURPOSE

The purpose of the proposal is to describe OIG's retrospective payment review procedures related to records requests, review processes, notices, and due process.

Texas Government Code §531.102 authorizes OIG to conduct reviews related to the provision and delivery of all health and human services in Texas to identify fraud, waste, or abuse.

SECTION-BY-SECTION SUMMARY

The proposed new §371.1723(a) identifies the types of retrospective payment reviews - data reviews and record reviews - performed by OIG and states that OIG may recoup an overpayment identified in a retrospective payment review.

The proposed new §371.1723(b) describes the procedures related to a retrospective payment review records request, including the time deadline required to submit records in response to a records request. The proposed new §371.1723(b) also states that failure to timely produce requested records may result in an OIG enforcement action.

The proposed new §371.1723(c) describes the review procedures related to a retrospective payment review, including the dollar limit of overpayment recoveries resulting from retrospective payment reviews and the ability of a person to produce records to address a review finding.

The proposed new §371.1723(d) specifies the notices OIG sends during a retrospective payment review, which includes any finding of an overpayment amount and instructions for filing an appeal.

The proposed new §371.1723(e) outlines the first and second level appeal options available to a person subject to a retrospective payment review.

The proposed new §371.1723(f) specifies the timing and circumstances under which results of a retrospective payment review become final.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will create a new rule;
- (6) the proposed rule will not expand, limit, or repeal existing rule(s);
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this new rule because it does not impose a cost on regulated persons; is necessary to receive a source of federal funds or comply with federal law; and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Frank Bryan, OIG Senior Counsel, has determined that for each year of the first five years the rule is in effect, the public benefit will be the identification and review of fraud, waste, and abuse in the provision and delivery of health and human services in the state of Texas.

Trey Wood, Chief Financial Officer, has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the new rule does not require a change to business practices and does not create additional costs to comply with the rule.

TAKINGS IMPACT ASSESSMENT

OIG has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHS Office of Inspector General - Chief Counsel Division, P.O. Box 85200, Austin, Texas 78708, or street address 4601 W. Guadalupe St., Austin, Texas 78751-3146; or by email to IG_Rules_Comments_Inbox@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R032" in the subject line.

STATUTORY AUTHORITY

The proposed new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.102(a), which grants OIG the responsibility for the prevention, detection, audit, inspection, review, and investigation of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded, and which provides OIG with the authority to obtain any information or technology necessary to enable it to meet its responsibilities; Texas Government Code §531.102(a-2), which requires the Executive Commissioner of HHSC to work in consultation with OIG to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.102(x), which requires the Executive Commissioner of HHSC, in consultation with OIG to adopt rules establishing criteria for determining enforcement and punitive actions with regard to a provider who has violated state law, program rules, or the provider's Medicaid provider agreement; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement §531.1131; and Texas Human Resources Code §32.039, which provides authority to assess administrative penalties and damages and provides due process for persons potentially subject to damages and penalties.

The proposed new section affects Texas Government Code §531.0055 and Texas Human Resources Code Chapter 32.

§371.1723. Recoupment of Overpayments Identified by Retrospective Payment Review.

(a) Introduction. The OIG conducts retrospective payment (RP) reviews related to the provision and delivery of all health and human services in the state. RP reviews include data reviews and record reviews. The OIG may recoup an overpayment identified in a RP review.

(b) Records.

(1) A person who receives a request for records and documentation for an OIG RP review must provide the requested records and documentation to the OIG within the time period requested by the OIG or 10 calendar days from the date of receipt of the request, whichever is later.

(2) When requested, a person must submit a signed and notarized OIG-approved records affidavit that properly authenticates the records and documentation provided to the OIG as business records pursuant to Texas Rules of Evidence Rule §803(6) and Rule §902(10).

(3) Failure to timely produce requested records and affidavits may result in an OIG enforcement action under this chapter.

(c) Review procedures.

(1) A RP review conducted by the OIG:

(A) limits the period covered by a RP review to five years;

(B) includes any finding of an overpayment amount;

(C) is limited to recovery of overpayments less than or equal to \$100,000 per case, except recovery of overpayments is limited to less than or equal to \$300,000 when the overpayment amount is based on a single Medicaid recipient's treatment; and

(D) permits a person subject to a review to produce records and documentation to address any finding found during a RP review by the date specified by the OIG.

(2) Overpayments identified in a RP review may be referred to other areas within the OIG or other entities outside of the OIG.

(3) For purposes of this section, a case means the application of the selected criteria to a particular set of data or records for a person subject to a review.

(d) Notice.

(1) The OIG provides written notice of review results, first level appeal results, if any, and second level appeal results, if any.

(2) A notice of RP review results includes any finding of an overpayment amount, instructions for filing a first level appeal, and a date by which the first level appeal request must be received.

(3) If applicable, a notice of first level appeal results includes any finding of an overpayment amount, instructions for filing a second level appeal, and a date by which the second level appeal request must be received.

(4) If applicable, a notice of second level appeal results includes any finding of an overpayment amount and instructions related to payment of any overpayment amount.

(5) OIG notices may be sent by electronic mail.

(e) Due process.

(1) A RP review provides an option for a first level appeal and, if necessary, a second level appeal.

(2) A first level appeal is a review conducted by a reviewer who was not associated with the initial review.

(3) A second level appeal, if necessary, is conducted by HHSC, or its contractor.

(4) A request for a first or second level appeal must be timely and complete as specified in the notice of review results or first level appeal results.

(f) Scope and effect.

(1) A notice of RP review results becomes final and unappealable 30 calendar days after the person's receipt of the RP review results notice, unless the OIG, or its contractor, has received a timely and complete request for a first level appeal.

(2) A notice of first level appeal results becomes final and unappealable 30 calendar days after the person's receipt of the first level appeal results notice, unless the OIG, or its contractor, has received a timely and complete request for a second level appeal.

(3) A notice of second level appeal results becomes final and unappealable 30 calendar days after the person's receipt of the second level appeal results notice.

(4) The effect of a final notice as specified in this subsection is to create a final debt in favor of the State of Texas.

(5) A person who receives a final notice as specified in this subsection must, within 60 calendar days after receipt of the final notice:

(A) pay the overpayment; or

(B) submit a request for, and execute, a final payment plan agreement approved by the OIG.

(6) Failure to pay a delinquent debt may result in OIG collection efforts or enforcement action under this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 31, 2024.

TRD-202400342

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 221-7320



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §§4.22, 4.23, 4.27, 4.29, 4.32, 4.34, 4.39

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter B, §§4.22, 4.23, 4.27, 4.29, 4.32, 4.34, and 4.39 concerning transfer of credit, core curriculum, and field of study curricula. Specifically, this amendment will encourage transferability of lower division course credit among institutions of higher education and implement the requirements of Senate Bill 1887 (88R).

This amendment will encourage the transferability of lower division course credit among institutions of higher education, and especially provide for the smooth transfer of lower division

credit through core curricula, field of study curricula, and a procedure for the resolution of transfer disputes. The Board is authorized to adopt rules and establish policies and procedures for the development, adoption, implementation, funding, and evaluation of core curricula, field of study curricula, and a transfer dispute resolution process under Texas Education Code, §§61.059, 61.0512, 61.0593, 61.821 - 61.828, and 61.834.

Rule 4.22, Authority, lists the sections of Texas Education Code that grant the Board authority over transfer of credit, core curriculum, and field of study curricula, and updates statutory references as appropriate.

Rule 4.23, Definitions, lists definitions broadly applicable to chapter 4. This rule provides the addition of definitions for Academic Associate Degrees and Applied Associate Degrees. This rule uses Texas Education Code, §61.003, to define categories of institutions.

Rule 4.27, Resolution of Transfer Disputes for Lower-Division Courses, details the procedures in the resolution of credit transfer disputes involving lower-division courses. This rule revision includes the Commissioner's role in the process placing emphasis on the fact the Commissioner or his designee's decision is final and there is no process for appeal. This revision also removes problematic language no longer supported by statutory authority.

Rule 4.29, Core Curricula Larger than 42 Semester Credit Hours, revision allows for an institution, contingent upon Board approval, to have a core curriculum of fewer than 42 semester credit hours for an associate degree program if it would facilitate the award of a degree or transfer of credit.

Rule 4.32, Field of Study Curriculum, revised to correct an error in the timeline of the process.

Rule 4.34, Revision of Approved Field of Study Curricula, revises the language of subsection (c) for clarity.

Rule 4.39, Texas Direct Associate Degree, an addition to subchapter B for the purpose of awarding a Texas Direct Associate Degree. The rule allows for the award of a "Texas Direct" associate degree with the directive to include a notation on the student's transcript who completes a field of study curriculum, the college's core curriculum; or an abbreviated core curriculum related to a specific approved field of study curriculum transferable to one or more general academic institutions.

Elizabeth Mayer, Assistant Commissioner, Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improvement of transferability of lower division course credit among institutions of higher education. There are no anticipated economic

costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

- (1) the rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule;
- (6) the rules will not limit an existing rule;
- (7) the rules will not change the number of individuals subject to the rule; and
- (8) the rules will not affect this state's economy.

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner, Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Elizabeth.Mayer@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Sections §§61.059, 61.0512, 61.0593, 61.821 - 61.828, and 61.834., which provides the Coordinating Board with the authority to develop and implement policies affecting the transfer of lower division course credit among institutions of higher education.

The proposed amendments affect transfer of credit, core curriculum, and fields of study.

§4.22. Authority.

The Board is authorized to adopt rules and establish policies and procedures for the development, adoption, implementation, funding, and evaluation of Core Curricula, Field of Study Curricula, and a transfer dispute resolution process under Texas Education Code, §§61.059, 61.0512, 61.0593, 61.821 - 61.828, 61.834 [61.059, 61.0593, 61.821, 61.8213-61.828].

§4.23. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Academic Associate Degree--A type of degree program generally intended to transfer to an upper-level baccalaureate program that will satisfy the lower-division requirements for a baccalaureate degree in a specific discipline. The Academic Associate Degree includes, but is not limited to, the Associate of Arts (A.A.), Associate of Science (A.S.), or Associate of Arts in Teaching (A.A.T.) degrees.

(2) Applied Associate Degree--A type of degree program designed to lead the individual directly to employment in a specific career. The Applied Associate Degree Program includes, but is not limited to, the Associate of Applied Arts (A.A.A.) or Associate of Applied Science (A.A.S.).

(3) [(4)] Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(4) [(2)] Commissioner--The Commissioner of Higher Education.

(5) [(3)] Core Curriculum or Texas Core Curriculum--The [the] curriculum in the liberal arts, humanities, sciences, and political, social, and cultural history that all undergraduates of an institution of higher education are required to complete before receiving an academic undergraduate degree. Core curriculum provisions apply to all institutions of higher education that offer academic undergraduate degree programs.

(6) [(4)] Directed Electives--A [a] set of courses within a major course of study, consisting of at least six semester credit hours, specific to each general academic teaching institution and prescribed by the faculty of each general academic teaching institution. Directed Electives form part of the Field of Study Curriculum.

(7) [(5)] Discipline Foundation Courses (DFC)--A [a] set of courses within a major course of study, consisting of up to twelve (12) semester credit hours. The Discipline Foundation Courses form part of the Field of Study Curriculum.

(8) [(6)] Discipline-Specific Subcommittee--A [a] subcommittee established under Title 19, Chapter 1, Subchapter V, §1.242 and §1.243. Each subcommittee is comprised of faculty from general academic teaching institutions and public junior colleges in a single discipline.

(9) Faculty Member--A person employed full-time by an institution of higher education as a member of the faculty whose primary duties include teaching, research, academic service, or administration. However, the term does not include a person holding faculty rank who spends a majority of the person's time for the institution engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate of assistant provost, or dean.

(10) [(7)] Field of Study Curriculum--A [a] set of courses that will satisfy lower-division requirements for an academic major at a general academic teaching institution. The Field of Study Curriculum has three components: (a) selected discipline-relevant Texas Core Curriculum courses, (b) the Discipline Foundation Courses, and (c) the Directed Electives.

(11) [(8)] General Academic Teaching Institution [academic teaching institution]--An [an] institution of higher education defined in Texas Education Code, §61.003(3).

(12) Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, other agency of higher education as defined in Texas Education Code, §61.003(8).

(13) Lower-Division Academic Course Guide Manual (ACGM)--A Board-approved publication listing academic courses that public two-year colleges may teach and report for contact hour reimbursement from state appropriations without special approval from the Board. Courses (except for developmental courses) listed in the ACGM are freely transferable among all public institutions of higher education in Texas in accordance with the Texas Education Code, §61.822.

(14) [(9)] Public Junior College [junior college]--An [an] institution of higher education defined in Texas Education Code, §61.003(2).

(15) [(10)] Texas Common Course Numbering System (TCCNS)--A [a] Board-approved course numbering system for lower-division academic courses that assigns common course numbers in order to facilitate the transfer of lower-division academic courses among institutions of higher education by promoting consistency in course designation and identification.

~~(16) [(11)] Texas Transfer Advisory Committee--The [the] advisory committee established under Title 19, Chapter 1, Subchapter V. The Texas Transfer Advisory Committee has responsibility for advising the Commissioner and Board on Field of Study Curricula, including their establishment and revision. The Texas Transfer Advisory Committee may request to form a Discipline-Specific Committee to assist in the development of a Field of Study Curriculum.~~

~~[(12) Institution of Higher Education or Institution--any public technical institute, public junior college, public senior college or university, medical or dental unit, other agency of higher education as defined in Texas Education Code, §61.003(8).]~~

~~[(13) Lower-Division Academic Course Guide Manual (ACGM)--a Board-approved publication listing academic courses that public two-year colleges may teach and report for contact hour reimbursement from state appropriations without special approval from the Board. Courses (except for developmental courses) listed in the ACGM are freely transferable among all public institutions of higher education in Texas in accordance with the Texas Education Code, §61.822.]~~

~~[(14) Faculty Member--a person employed full-time by an institution of higher education as a member of the faculty whose primary duties include teaching, research, academic service, or administration. However, the term does not include a person holding faculty rank who spends a majority of the person's time for the institution engaged in managerial or supervisory activities, including a chancellor, vice chancellor, president, vice president, provost, associate of assistant provost, or dean.]~~

§4.27. *Resolution of Transfer Disputes for Lower-Division Courses.*

(a) Each institution [Institutions] of higher education shall apply the following procedures in the resolution of credit transfer disputes involving lower-division courses:

(1) If an institution of higher education does not accept [course credit] a course included in the field of study curriculum for the program in which a student is enrolled or a course in the core curriculum earned by a student at another institution of higher education, the receiving institution shall give written notice to the student and to the sending institution that it intends to deny the transfer of the course credit and shall include in that notice the reasons for the proposed denial. The receiving institution must attach the procedures for resolution of transfer disputes [for lower-division courses] as outlined in this section to the notice. The notice and procedure must include:

(A) clear instructions for appealing the decision to the Commissioner; and

(B) the name and contact information for the designated official at the receiving institution who is authorized to resolve the credit transfer dispute.

(2) A student who receives notice as specified in paragraph (1) of this subsection may dispute the denial of credit by contacting a designated official at either the sending or the receiving institution.

(3) The two institutions and the student shall attempt to resolve the transfer of the course credit in accordance with this section. An institution that proposes to deny the credit shall resolve the dispute not later than the 45th day after the date that the student enrolls at the institution.

(4) If the student or the sending institution is not satisfied with the resolution of the credit transfer dispute, the student or the sending institution may notify the Commissioner in writing of the denial of the course credit and the reasons for denial. [request for transfer dispute resolution. A receiving institution that denies course credit for transfer

shall notify the Commissioner in writing of its denial and the reasons for the denial not later than the 45th day after the date the receiving institution provided the required notice of the transfer credit denial under subsection (a)(1) of this section.]

(b) Not later than the 20th business day after the date that the Commissioner receives the notice of dispute concerning the application of credit for the core curriculum or field of study curriculum, the Commissioner or the Commissioner's designee shall make the final determination about a credit transfer dispute and give written notice of the determination to the student and each institution. [The Commissioner or the Commissioner's designee shall make the final determination about a credit transfer dispute and give written notice of the determination to the student and institutions. The decision is not a contested case. The Commissioner's decision is final and may not be appealed.]

(c) If the Commissioner or the Commissioner's designee determines that an institution may not deny the transfer of credit for the core curriculum or the field of study curriculum, the receiving institution shall apply the credit toward the core curriculum or the field of study as determined by the Commissioner or the Commissioner's designee. [Each institution of higher education shall publish in its course catalogs the procedures specified in this section.]

(d) A decision under this section is not a contested case. The Commissioner or the Commissioner's designee's decision is final and may not be appealed. Each transfer credit dispute resolved by the Commissioner shall be posted on the Board website, including the final determination. [The Board shall collect data on the types of transfer disputes that are reported and the disposition of each case that is considered by the Commissioner or the Commissioner's designee.]

(e) Each institution of higher education shall publish in its course catalogs the procedures specified in this section. [If a receiving institution has cause to believe that a course being presented by a student for transfer from another institution is not of an acceptable level of quality, it should first contact the sending institution and attempt to resolve the problem. In the event that the two institutions are unable to come to a satisfactory resolution, the receiving institution may notify the Commissioner who may investigate the course. If its quality is found to be unacceptable, the Board may discontinue funding for the course.]

(f) The Board shall collect data on the types of transfer disputes that are reported and the disposition of each case that is considered by the Commissioner or the Commissioner's designee.

§4.29. *Core Curricula Larger than 42 Semester Credit Hours.*

(a) No institution may adopt a core curriculum of more than 42 semester credit hours.

(b) An institution may, with Board approval, have a core curriculum of fewer than 42 semester credit hours for an associate degree program if it would facilitate the award of a degree or transfer of credit.

§4.32. *Field of Study Curriculum.*

(a) In accordance with Texas Education Code, §61.823, the Board is authorized to approve Field of Study Curricula for certain fields of study/academic disciplines. The Board delegates to the Commissioner development of Field of Study Curricula with the assistance of the Texas Transfer Advisory Committee, as defined by Title 19, Subchapter V, Chapter 1. The Texas Transfer Advisory Committee is responsible for convening Discipline-Specific Subcommittees. Discipline-Specific Subcommittees shall provide subject-matter expertise to the Texas Transfer Advisory Committee in developing Field of Study Curricula in specific disciplines.

(b) A complete Field of Study Curriculum will consist of the following components:

(1) Selected Texas Core Curriculum courses.

(A) Selected Texas Core Curriculum courses relevant to the discipline may be included in the Field of Study Curriculum for that discipline.

(B) Discipline-Specific Subcommittees are responsible for identifying discipline-relevant courses from a list of all Texas Core Curriculum courses provided by the Board that may be used to satisfy core curriculum requirements. Each Discipline-Specific Subcommittee shall recommend identified Texas Core Curriculum courses to the Texas Transfer Advisory Committee.

(C) The Texas Transfer Advisory Committee shall recommend the Texas Core Curriculum courses selected for inclusion in a Field of Study Curriculum to the Commissioner who may approve or deny the inclusion of the recommended Texas Core Curriculum courses in the Field of Study Curriculum.

(D) Each institution of higher education must publish on its public website in manner easily accessed by students the Texas Core Curriculum courses selected for inclusion in a Field of Study Curriculum with the cross-listed TCCNS course number.

(2) Discipline Foundation Courses (DFC).

(A) Discipline Foundation Courses are a set of courses within a major course of study, consisting of up to twelve (12) semester credit hours, selected for inclusion in a Field of Study Curriculum for that discipline. These courses will apply toward undergraduate degrees within the Field of Study Curriculum at all Texas public institutions that offer a corresponding major or track, except for those institutions approved to require alternative Discipline Foundation Courses under Title 19, Chapter 4, Subchapter B, §4.35 (relating to Petition for Alternative Discipline Foundation Courses).

(B) Each receiving institution must apply the semester credit hours a student has completed in a Discipline Foundation Course upon the student's transfer into a corresponding major or track. The sending institution must indicate Discipline Foundation Courses on the transfer student's transcript.

(C) Discipline-Specific Subcommittees are responsible for identifying discipline-relevant courses for inclusion on the Discipline Foundation Courses list. The Discipline-Specific Subcommittees must select from courses listed in the Lower-Division Academic Course Guide Manual. Each Discipline-Specific Subcommittee shall report this course list to the Texas Transfer Advisory Committee.

(D) The Texas Transfer Advisory Committee shall recommend the Discipline Foundation Courses selected by the Discipline Specific Subcommittees for inclusion in a Field of Study Curriculum to the Commissioner. The Commissioner may approve or deny the Discipline Foundation Courses recommended by the Texas Transfer Advisory Committee for inclusion in a Field of Study Curriculum.

(E) General academic teaching institutions may submit a request for an alternative set of Discipline Foundation Courses for a specific program of study according to the process in Title 19, Chapter 4, Subchapter B, §4.35.

(F) Each institution of higher education must report to the Coordinating Board and publish on its public website in manner easily accessed by students the Discipline Foundation Courses with the cross-listed TCCNS course numbers for each course.

(G) The Commissioner must publish the list of Discipline Foundation Courses for each approved Field of Study Curriculum on the agency website with the cross-listed TCCNS course number for each course.

(3) Directed Electives.

(A) Directed Electives are a set of courses that apply toward a major course of study within a Field of Study Curriculum at a specific general academic teaching institution.

(B) The Directed Electives for each Field of Study Curriculum must consist of at least six (6) semester credit hours. The Directed Electives and Discipline Foundation Courses components combined may not exceed twenty (20) semester credit hours in total.

(C) Faculty from each general academic teaching institution may select a list of Directed Electives for the major course of study corresponding to each Field of Study curriculum. Faculty must select the Directed Electives only from courses listed in the Lower-Division Academic Course Guide Manual.

(D) The Chief Academic Officer of the institution shall ~~submit~~ submit the list of Directed Electives for inclusion in a Field of Study Curriculum with the cross-listed TCCNS course number to the Commissioner not later than 45 days after being sent the request from the Coordinating Board. The Coordinating Board ~~will~~ shall publish the list of each institution's Directed Electives for each approved Field of Study Curriculum on the agency website with the cross-listed TCCNS course numbers for each course.

(E) An institution that does not submit its Directed Electives in accordance with subparagraph (D) shall be required to accept any Directed Elective courses that appear on the Board's list for the Texas Direct Associate Degree for any institution's Field of Study Curriculum. [Each institution of higher education must publish on its public website in manner easily accessed by students Directed Electives with the cross-listed TCCNS course number.]

(F) Each institution of higher education must publish on its public website in a manner easily accessed by students Directed Electives with the cross-listed TCCNS course number.

(c) A receiving general academic teaching institution shall determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment. If a student successfully completes an approved Field of Study Curriculum, a general academic teaching institution must substitute that block of courses for the receiving institution's lower-division requirements for the degree program for the corresponding Field of Study Curriculum into which the student transfers. Upon enrollment, the general academic teaching institution must grant the student full academic credit toward the degree program for the block of courses transferred.

(d) If a student transfers from one institution of higher education to another without completing the Field of Study Curriculum, the receiving institution must grant academic credit in the Field of Study Curriculum for each of the courses that the student has successfully completed in the Field of Study Curriculum of the sending institution. After granting the student credit for these courses, the institution may require the student to satisfy remaining course requirements in the current Field of Study Curriculum of the receiving general academic teaching institution, or to complete additional requirements in the receiving institution's program, as long as those requirements do not duplicate course content the student previously completed through the Field of Study Curriculum.

(e) Each institution must note the selected Texas Core Curriculum component and Discipline Foundation Courses components of the Field of Study Curriculum courses on student transcripts as recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO).

(f) The Board shall publish on its website the components of each Field of Study Curriculum, including the selected Texas Core Curriculum courses, the Discipline Foundation Courses, and the Directed Electives of each general academic teaching institution.

(g) Effective Dates.

(1) Unless repealed or replaced, Field of Study Curricula in effect as of March 1, 2021 will remain in effect until August 31, 2025, upon which date those Field of Study Curricula expire by operation of law. For Field of Study Curricula that are repealed, replaced, or expire by operation of law, the following transition or "teach out" provisions apply:

(A) A student who has earned credit on or before August 31, 2022, in one or more courses included in a Field of Study Curriculum that exists on March 1, 2021, is entitled to complete that Field of Study Curriculum on or before August 31, 2025.

(B) A student who has not, on or before August 31, 2022, earned any course credit toward a Field of Study Curriculum in effect on March 1, 2021, is not entitled to transfer credit for that Field of Study Curriculum.

(2) After an institution's Spring 2026 enrollment deadline, a receiving institution is not required to transfer a complete Field of Study Curricula that expired prior to that date. A receiving institution may, at its discretion, choose to accept a complete or partial Field of Study Curricula that has expired.

§4.34. Revision of Approved Fields of Study Curricula.

(a) The Commissioner may modify or revise a Field of Study Curriculum when a need for such a revision is identified.

(b) Any Chief Academic Officer of an institution that offers a corresponding major or track may request a modification or revision to an approved Field of Study Curriculum. The Texas Transfer Advisory Committee shall evaluate institutions' proposed modifications or revisions to Field of Study Curricula and may refer the proposed revisions to Discipline-Specific Subcommittees prior to making a final recommendation to the Commissioner.

(c) A student is entitled to apply an institution's previously approved directed electives to the field of study curriculum for not fewer than two academic years after an institution modifies or revises its directed electives.

§4.39. Texas Direct Associate Degree.

A junior college, public state college, or public technical institute shall award a student a "Texas Direct" associate degree and include a notation on the transcript of a student who completes any Board approved field of study curriculum developed by the Board and:

(1) The college's core curriculum; or

(2) An abbreviated core curriculum related to a specific approved field of study curriculum transferable to one or more general academic institutions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2024.

TRD-202400424

Nichole Bunker-Henderson

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 427-6182



PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER DD. COMMISSIONER'S

RULES CONCERNING SUBSTITUTE

ASSESSMENTS FOR GRADUATION

19 TAC §101.4003

The Texas Education Agency (TEA) proposes an amendment to §101.4003, concerning Texas assessment of knowledge and skills exit-level alternate assessments. The proposed amendment would update the performance standards for former students whose assessment graduation requirement was the Texas Assessment of Knowledge and Skills (TAKS) based on the redesign of the State of Texas Assessment of Academic Readiness (STAAR®).

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.4003 specifies the assessments and corresponding passing scores allowed as alternate assessments for certain former students whose assessment graduation requirement was TAKS. As required in Texas Education Code (TEC), §39.025, some of the alternate assessments former students may use to satisfy graduation assessment requirements in place of TAKS exit-level assessments are the STAAR® end-of-course (EOC) assessments.

In 2023, STAAR® was redesigned as required by House Bill (HB) 3906, 86th Texas Legislature, 2019, and HB 3261, 87th Texas Legislature, Regular Session, 2021. Based on the required redesign, STAAR® performance standards were re-evaluated and updated.

The proposed amendment would update Figure: 19 TAC §101.4003(a) to align the performance standards for former students whose assessment graduation requirements was TAKS with the updated performance standards for the STAAR® EOC assessments. The performance standards in Figure: 19 TAC §101.4003(a) for STAAR® Algebra I, English II, Biology, and U.S. History EOC assessments would be amended to ensure they reflect an equivalent level of rigor as the performance standards that were in place for the TAKS exit-level assessments.

FISCAL IMPACT: Iris Tian, deputy commissioner of analytics, assessment, and reporting, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts, open-enrollment charter schools, and former TAKS examinees with updated performance standards for alternate assessments to meet graduation requirements and earn a high school diploma.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 16, 2024, and ends March 18, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 16, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.02541, which requires the commissioner by rule to establish a procedure to determine whether certain former students, who have met curriculum requirements for graduation but have not performed satisfactorily on an assessment instrument, may qualify to graduate and receive a high school diploma; and TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma, establishes alternate assessment options for students who entered Grade 9 prior to the 2011-2012 school year or Grade 10 or above in the 2011-2012 school year, and requires the commissioner to establish satisfactory performance levels on the alternate assessments.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.02541 and §39.025.

§101.4003. *Texas Assessment of Knowledge and Skills Exit-Level Alternate Assessments.*

(a) In accordance with the Texas Education Code (TEC), Chapter 39, Subchapter B, the commissioner of education adopts certain assessments as provided in the figure in this subsection as alternate assessments that a person may use in place of corresponding Texas Assessment of Knowledge and Skills (TAKS) exit-level assessments beginning in the fall of 2017.

Figure: 19 TAC §101.4003(a)
[Figure: 19 TAC §101.4003(a)]

(b) An eligible person who has met the passing standard on a state-approved alternate exit-level assessment as set by the commissioner and provided in the figure in subsection (a) of this section in a particular subject area has satisfied the exit-level testing requirement in that subject area.

(c) A person is eligible to substitute an alternate exit-level assessment for a TAKS exit-level assessment for purposes of this subchapter if the person was first enrolled in Grade 9 prior to the 2011-2012 school year or first enrolled in Grade 10 or above in the 2011-2012 school year.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2024.

TRD-202400423

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 475-1497



CHAPTER 104. ACCELERATED INSTRUCTION

19 TAC §104.1001

The Texas Education Agency (TEA) proposes an amendment to §104.1001, concerning the accelerated instruction, modified teacher assignment, and accelerated learning committee. The proposed amendment would implement House Bill (HB) 1416, 88th Texas Legislature, Regular Session, 2023, by providing approval criteria for instruction through automated, computerized, or other augmented method (ACAM); establishing school district or open-enrollment charter school waivers of accelerated instruction requirements; and clarifying supplemental instruction requirements for students repeating an entire course.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 104.1001 establishes the provision of accelerated instruction and related supports for students who have failed to perform satisfactorily on assessments required under Texas Education Code (TEC), §39.023. HB 1416, 88th Texas Legislature, Regular Session, 2023, changed the requirements for accelerated instruction by differentiating the required hours based on student performance, implementing the accelerated education plan, providing performance-based accelerated instruction waivers for qualifying school districts and open enrollment charter schools, and removing the ratio requirement for school districts and open enrollment charter schools using ACAM products for

providing supplemental instruction. The proposed amendment to §104.1001 would implement HB 1416 as follows.

The term "supplemental accelerated instruction" would be changed to "accelerated instruction" throughout the rule.

The requirements for accelerated instruction would be modified in subsection (b)(1).

New subsection (b)(3) would be added to clarify that school districts and open-enrollment charter schools cannot excuse students from receiving the required accelerated instruction because of the provisions of renumbered subsection (b)(2).

Subsection (c) would be amended to modify the provisions related to required transportation for students attending accelerated instruction programs outside school hours.

New subsection (d)(1) and (2) would be added to specify the hours of instruction that must be provided based on a student's performance on an assessment instrument specified under TEC, §28.0211(a-1).

New subsection (e) would be added to outline provisions related to accelerated education plans and notification of the plans to a student's parent or guardian.

Requirements for accelerated learning committees, including specific provisions for admission, review, and dismissal (ARD) committees serving as accelerated learning committees, would be removed.

New subsection (g) would be added to describe new waivers of accelerated instruction requirements.

New subsection (h) would be added to allow for the provision of accelerated instruction by ACAM. The new subsection would define ACAM; describe approval by TEA of ACAM to provide accelerated instruction that is more effective than individual or group instruction and waive the 4:1 student-to-teacher ratio requirement; list school district and charter school responsibilities when implementing the use of ACAM for accelerated instruction; and state that vendors seeking provider approval will follow the process established by TEA.

New subsection (i) would clarify that accelerated instruction waivers focus only on mathematics and reading because those subject areas are tested consecutively. The new subsection would also describe the conditions that will enable schools to qualify for the accelerated instruction waiver and explain how school districts and charter schools will be notified if they are included on the waiver list and how they can apply for a waiver using the Accelerated Instruction Waiver under TEA Login (TEAL).

New subsection (j) would clarify that repeating a high school course in its entirety is the equivalent to grade retention, which would remove accelerated instruction requirements for students repeating an entire course at the high school level.

FISCAL IMPACT: Andrew Hodge, associate commissioner for system innovation, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by adding information related to instruction conducted by ACAM, introducing waivers of accelerated instruction requirements, and including provisions related to accelerated instruction plans. The proposal would limit an existing regulation by removing information related to ARD committees serving as accelerated learning committees. In addition, the new waiver provisions would decrease the number of individuals subject to the rule for the duration of the waiver, which is one school year.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Hodge has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts and open-enrollment charter schools that meet the set criteria a one-school-year waiver from accelerated instruction. Additionally, school districts and charter schools using products included on the TEA ACAM list will not have to adhere to the 4:1 student-to-teacher ratio for students who meet the set criteria. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would require a written report or other paperwork but does not specifically require a principal or classroom teacher to complete the report or paperwork. However, local district decisions may vary. Regardless, the proposal would impose the least burdensome requirement possible to achieve the objective of the rule. School districts meeting the accelerated instruction waiver criteria will have to complete the Accelerated Instruction Waiver through TEAL.

PUBLIC COMMENTS: The public comment period on the proposal begins February 16, 2024, and ends March 18, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calen-

dar days after notice of the proposal has been published in the *Texas Register* on February 16, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.0211, as amended by House Bill 1416, 88th Texas Legislature, Regular Session, 2023, which requires that students are provided accelerated instruction each time a student fails to perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), in Grades 3-8 or fails to perform satisfactorily on an end-of-course assessment instrument administered under TEC, §39.023(c).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.0211, as amended by HB 1416, 88th Texas Legislature, Regular Session, 2023.

§104.1001. Accelerated Instruction and[-] Modified Teacher Assignment[-] and Accelerated Learning Committee[-].

(a) Definition of [supplemental] accelerated instruction. For purposes of this chapter, "[supplemental] accelerated instruction" means instruction required under Texas Education Code (TEC), §28.0211(a-1) and, if applicable, (a-4).

(b) Requirements for [supplemental] accelerated instruction.

(1) Each time a student fails to perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), in Grades 3-8, or on an end-of-course assessment instrument administered under TEC, §39.023(c), other than an assessment instrument developed or adopted based on alternative academic achievement standards, the school district or open-enrollment charter school the student attends shall provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year and, subject to TEC, §28.0211(a-7) and (a-8), either:

(A) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area; or

~~[(A) provide to the student supplemental accelerated instruction in the applicable subject area during the subsequent summer or school year; or]~~

(B) provide the student supplemental instruction under TEC, §28.0211(a-4).

~~[(B) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area.]~~

~~[(2) Each time a student fails to perform satisfactorily as determined by the commissioner under TEC, §39.0241(a), on an end-of-course assessment instrument, a school district or open-enrollment charter school shall:]~~

~~[(A) provide to the student supplemental accelerated instruction under TEC, §28.0217, in the subject assessed by the assessment instrument; or]~~

~~[(B) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area.]~~

~~[(3) For a student served by special education who does not perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), the student's admission, review, and dismissal (ARD) committee must determine the manner in which the student will engage in supplemental accelerated instruction. ARD committees must consider the individual needs of a student with a disability when determining the manner in which supplemental accelerated instruction is to be provided to the student. If supplemental accelerated instruction is to be provided to the student, the supplemental accelerated instruction must meet the requirements outlined in this subsection unless the ARD committee specifically determines that some or all of the requirements for supplemental accelerated instruction would deny the student access to a free appropriate public education (FAPE).]~~

~~[(4)] The superintendent of each school district and chief administrative officer of each open-enrollment charter school shall establish procedures to ensure that each eligible student who is absent or does not receive a test score for any test administration shall receive appropriate [supplemental] accelerated instruction as warranted on an individual student basis.~~

(3) Paragraph (2) of this subsection may not be used to excuse a student from appropriate accelerated instruction required by this subsection.

(c) Participation in [supplemental] accelerated instruction. Accelerated [Supplemental accelerated] instruction may require a student to participate before or after normal school hours and may include participation at times of the year outside normal school operations. Each school district and open-enrollment charter school shall be responsible for providing transportation to students required to attend [supplemental] accelerated instruction programs if the programs occur outside of regular school hours, unless the school district or charter school does not operate, contract, or agree with another entity to operate a transportation system.

(1) In providing [supplemental] accelerated instruction, a school district or an open-enrollment charter school may not remove a student from recess or from the foundation or enrichment curriculum as defined in TEC, §28.002, except under circumstances for which a student enrolled in the same grade level who is not receiving [supplemental] accelerated instruction would be removed. The foundation curriculum includes English language arts, mathematics, science, and social studies. Courses in the enrichment curriculum include languages other than English; health, with emphasis on physical health, proper nutrition, and exercise; mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision making; suicide prevention; physical education; fine arts; career and technical education; technology applications; religious literature; and personal financial literacy.

(2) In the event that a school week is three or less instructional days, the school is exempt from meeting the requirement of meeting once per week for [supplemental] accelerated instruction.

(d) Content and delivery of [supplemental] accelerated instruction. Accelerated [Supplemental accelerated] instruction shall be based on, but not limited to, targeted instruction in the essential knowledge and skills for the applicable grade levels and subject areas and be provided by a person with training in the applicable instructional materials for the [supplemental] accelerated instruction and under the oversight of the school district or open-enrollment charter school. Accelerated [Supplemental accelerated] instruction shall be provided as outlined in TEC, §28.0211(a-4)(1) and (2) [§28.0211(a-4)(2)-(5) and (8)], to a student individually or in a group of no more than four [three] students, unless the parent or guardian of each student

in the group authorizes a larger group. School districts and charter schools shall provide students who fail to perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1):

(1) no less than 15 hours of supplemental instruction; or

(2) no less than 30 hours of supplemental instruction for students who scored Low Did Not Meet Grade Level as indicated by state-provided district-level data files or failed to perform satisfactorily on any Grade 3 assessment.

(c) Accelerated education plans. For each student who does not perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1), for two or more consecutive school years in the same subject area, the school district or open-enrollment charter school the student attends shall develop an accelerated education plan as described by TEC, §28.0211(f), and provide the student at least 30 hours of supplemental instruction. A school district or charter school shall make a good faith attempt to provide to the parent or guardian of a student to whom TEC, §28.0211(b), applies a parent-teacher conference with the student's primary teacher at the start and end of the subsequent school year. At the conference, the school district or charter school shall provide the student's parent or guardian with:

(1) the notice required under TEC, §28.0211(a-14); and

(2) an explanation of:

(A) the accelerated instruction to which the student is entitled under this section; and

(B) the accelerated education plan that must be developed for the student under TEC, §28.0211(f), and the manner in which the parent or guardian may participate in developing the plan.

~~[(e) Accelerated learning committee. A school district or an open-enrollment charter school shall establish an accelerated learning committee described by TEC, §28.0211(e), for each student who does not perform satisfactorily on a mathematics or reading assessment instrument under TEC, §39.023, in Grade 3, 5, or 8.]~~

~~[(1) The accelerated learning committee shall be composed of the principal or the principal's designee, the student's parent or guardian, and the teacher of the subject of an assessment instrument on which the student failed to perform satisfactorily. If a student is changing campuses, the committee must include the receiving principal or designee, the sending principal or designee, the receiving content teacher or designee, and the sending content teacher or designee.]~~

~~[(2) The school district or open-enrollment charter school shall notify the parent or guardian of the time and place for convening the accelerated learning committee and the purpose of the committee.]~~

~~[(3) The accelerated learning committee shall, not later than the start of the subsequent school year, develop an educational plan for the student that provides the necessary supplemental accelerated instruction to enable the student to perform at the appropriate grade level by the conclusion of the school year. The provisions of TEC, §28.0211(f-1)-(f-5), (h), and (j), must be satisfied, where applicable, in connection with the development and implementation of the educational plan.]~~

~~[(f) Requirements for an ARD committee serving as an accelerated learning committee.]~~

~~[(1) The ARD committee must serve as the accelerated learning committee for a student served by special education who does not perform satisfactorily on an assessment instrument described by subsection (e) of this section.]~~

~~[(2) The ARD committee must serve as the accelerated learning committee for students who meet the criteria for participation in alternative assessment instruments under TEC, §39.023(b); who do not perform satisfactorily on a mathematics or reading assessment instrument in Grade 3, 5, or 8. The ARD committee must determine the manner in which the student will participate in supplemental accelerated instruction; however, the requirements for supplemental accelerated instruction described by subsection (b) of this section do not apply.]~~

~~[(3) In serving as the accelerated learning committee for a student served by special education, the ARD committee must meet and develop a plan in accordance with TEC, §28.0211(f), to determine the manner in which the student will participate in supplemental accelerated instruction, and this meeting must include the required members of a properly constituted ARD committee as described in §89.1050 of this title (relating to The Admission, Review, and Dismissal Committee).]~~

~~[(4) When the ARD committee for a student served by special education serves as the accelerated learning committee, efforts must be taken to ensure parental participation as specified within the requirements of §89.1050(d) of this title and 34 Code of Federal Regulations §300.322.]~~

~~[(5) The ARD committee, serving as the accelerated learning committee, must document decisions regarding supplemental accelerated instruction in writing and a copy must be provided to the student's parent or guardian in accordance with TEC, §28.0211(f-1). This documentation may either be included in ARD deliberations or as a supplemental attachment to the student's individualized education program.]~~

~~[(6) A parent or guardian of a student served by special education may use a dispute resolution mechanism specified in §89.1150 of this title (relating to General Provisions) to resolve any dispute between the parent and a public education agency relating to the identification, evaluation, or educational placement of or the provision of a FAPE to a student with a disability. If a parent or guardian of a student served by special education does not agree with the decision of the ARD committee serving as the accelerated learning committee regarding supplemental accelerated instruction, the parent or guardian may follow the school district grievance policy provided for under TEC, §28.0211(f-3).]~~

~~[(f) [(g)] Request for teacher assignment. In accordance with TEC, §28.0211(a-5), the parent or guardian of a student who fails to perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1), [a mathematics or reading assessment in Grade 3, 5, or 8] may follow established school district or open-enrollment charter school processes to request that the student be assigned to a particular classroom teacher in the applicable subject area for the subsequent school year if more than one classroom teacher is available.~~

~~[(g) Waivers of accelerated instruction requirements. The commissioner of education may waive requirements of accelerated instruction for a school district or an open-enrollment charter school in which 60% of the students who received accelerated instruction during the school year immediately preceding the previous school year, including at least 60% of students whose performance on the applicable assessment instrument was significantly below satisfactory, as defined by commissioner rule, performed satisfactorily in the previous school year on the assessment instrument in each subject in which the student previously failed to perform satisfactorily. The commissioner shall publish a list of school districts and open-enrollment charter schools that qualify for the waiver not later than the beginning of each school year, starting before the 2024-2025 school year. For purposes of determining~~

whether a school district or charter school qualifies for a waiver under this subsection, the commissioner shall:

(1) if a student received accelerated instruction in more than one subject during the applicable school year, consider the student's performance on the assessment instrument in each subject separately from the student's performance on the assessment instrument for each other subject; and

(2) by rule provide that a school district may not qualify for a waiver if students who are receiving special education services or are educationally disadvantaged are overrepresented among the students in the district who received accelerated instruction during the school year immediately preceding the previous school year and did not perform satisfactorily in the previous school year on the assessment instrument in each applicable subject.

(h) Approval of automated, computerized, or other augmented method (ACAM). The Texas Education Agency (TEA) shall approve one or more products that use an automated, computerized, or other augmented method for providing accelerated instruction under TEC, §28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group instruction required under TEC, §28.0211(a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency. TEA may approve a product under this subsection only if evidence indicates that the product is more effective than the individual or group instruction required under TEC, §28.0211(a-4)(6).

(1) For the purposes of this subsection, ACAM means an automated, computerized, or other augmented method for providing accelerated instruction under TEC, §28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group instruction required under TEC, §28.0211(a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency.

(2) School districts and open-enrollment charter schools may provide accelerated instruction using an ACAM listed on the TEA website with information related to accelerated instruction. The 4:1 student-to-teacher ratio requirement in subsection (d) of this section does not apply to a school district or charter school using a listed ACAM product to provide accelerated instruction to its students.

(3) School districts and open-enrollment charter schools shall:

(A) notify the parent or guardian of the use of ACAM for providing the required accelerated instruction;

(B) ensure that the required hours of supplemental instruction are completed prior to the subsequent State of Texas Assessments of Academic Readiness (STAAR®) administration;

(C) use ACAM remotely, regardless of primary mode of instruction (i.e., in-person, virtual, or hybrid) only if the school district ensures that time spent by the student engaged in ACAM is aligned with approved product usage expectations documented by the school district;

(D) adhere to the ACAM usage fidelity requirements by product as approved by TEA to waive ratio requirements. A school district not fulfilling usage fidelity with an ACAM product will be required to revert to the 4:1 ratio for supplemental instruction as specified in subsection (d) of this section; and

(E) be responsible for contracting and funding the selected vendors included on the TEA list of approved vendors.

(4) Entities seeking ACAM accelerated instruction provider approval shall follow a process required by TEA.

(i) Accelerated instruction waivers.

(1) For the purposes of this subsection:

(A) "significantly below satisfactorily" is defined as achieving a performance level of Low Did Not Meet Grade Level on a STAAR® mathematics or reading administration;

(B) "satisfactorily" is defined as achieving a performance level of Approaches or better on a STAAR® mathematics or reading administration; and

(C) "educationally disadvantaged" is defined as being identified in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) as being eligible to participate in the national free or reduced-price lunch program established under 42 U.S.C. §1751 et seq.

(2) Only those subject areas for which two consecutive years of assessment instrument distribution can be positively identified (i.e., mathematics and reading) for all students based on their grade level shall be considered in the determination of this waiver.

(3) A school district or an open-enrollment charter school shall be eligible for the one-year waiver if it meets all of the following conditions when reviewing the most recent available year of STAAR® data:

(A) 60% of total students eligible to receive accelerated instruction in mathematics and 60% of total students eligible to receive accelerated instruction in reading score satisfactorily on the applicable subject area assessment instrument;

(B) 60% of students eligible to receive accelerated instruction who scored significantly below satisfactorily in the prior year score satisfactorily on the applicable subject area assessment instrument(s). This condition is only applicable if at least 10 students receiving accelerated instruction scored significantly below satisfactorily in the prior year; and

(C) at least 50% of students receiving special education services or qualifying as educationally disadvantaged who received accelerated instruction in mathematics and/or reading score satisfactorily on the subsequent applicable subject area assessment instrument(s). This condition is only applicable if at least 10 students who received accelerated instruction receive special education services or qualified as educationally disadvantaged.

(4) TEA shall generate a yearly report that identifies all school districts and open-enrollment charter schools that meet all applicable conditions and are consequently eligible for the one-year waiver.

(5) Eligible school districts and open-enrollment charter schools shall be notified via TEA communication pathways upon the publication of the annual list.

(6) Upon distribution of the annual notification, eligible school districts and open-enrollment charter schools shall have 45 days to apply for the waiver using the Accelerated Instruction Waiver under TEA Login (TEAL).

(7) The one-year waiver application shall contain the following at minimum:

(A) the school district or open-enrollment charter school's name;

(B) the signature of the school district's superintendent or the chief administrative officer of an open-enrollment charter school;

(C) documentation of the approval of the board of trustees or governing board, as applicable; and

(D) an explanation of how the school district or open-enrollment charter school will evaluate the impact of the waiver on student performance.

(j) Repeating a high school course.

(1) Credit recovery means completing a certain number of seat hours to satisfy the course requirements after failure or excessive absences.

(2) For courses taken for high school credit, a student who is required to repeat any course in which the student was enrolled in during the previous school year and who is eligible for accelerated instruction for the current school year is exempt from accelerated instruction requirements for that specific course if that course is retaken in its entirety (i.e., to earn a full credit). However, a student who is participating in credit recovery is still required to receive accelerated instruction.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2024.

TRD-202400422

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 475-1497



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 307. BEHAVIORAL HEALTH PROGRAMS

SUBCHAPTER F. BEHAVIORAL HEALTH PARTNERSHIP PROGRAM

26 TAC §§307.251, 307.253, 307.255, 307.257, 307.259, 307.261, 307.263, 307.265, 307.267

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new Subchapter F, Behavioral Health Partnership Program in Texas Administrative Code, Chapter 307. New Subchapter F comprises §307.251, concerning Purpose; §307.253, concerning Application; §307.255, concerning Definitions; §307.257, concerning Behavioral Health Partnership Program Liaison Qualifications; §307.259, concerning Local Mental Health Authority or Local Behavioral Health Authority Responsibilities; §307.261, concerning Determining which Local Mental Health Authority or Local Behavioral Health Authority Employs a Behavioral Health Partnership Program Liaison; §307.263, concerning Responsibilities of a Behavioral Health Partnership Program Liaison; §307.265, concerning Texas Health and Human Services Commission Waiver Process; §307.267, concerning Texas Health and Human Services Commission Notification.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill 26, 88th Legislature, Regular Session, 2023, which amends Texas Education Code §8.151 and §8.152 to establish a process for local mental health authorities (LMHAs) or local behavioral health authorities (LBHAs) to submit a waiver request to HHSC to hire a licensed master social worker or licensed professional counselor (LPC) associate in lieu of a non-physician mental health professional (NPMHP) if the LMHA is unable to hire a NPMHP in its designated regional education service center (ESC). The proposal establishes the behavioral health partnership program (BHPP) as the program name and "behavioral health partnership program liaison" as the position title that includes an NPMHP or a person hired under the waiver process.

SECTION-BY-SECTION SUMMARY

Proposed new §307.251 describes the purpose of the subchapter, which is to implement the BHPP.

Proposed new §307.253 establishes new Subchapter F's applicability to LMHAs and LBHAs.

Proposed new §307.255 provides definitions for terminology used in the subchapter. Additionally, for purposes of this subchapter, a "non-physician mental health professional" as referenced under Texas Education Code §8.152 is included in the term "behavioral health partnership program liaison."

Proposed new §307.257 describes the BHPP liaison as a person who either meets the qualifications of an NPMHP or for whom the LMHA or LBHA submits a waiver request to HHSC.

Proposed new §307.259 describes LMHA and LBHA responsibilities to enter into a memorandum of understanding with the ESC addressing employment of a BHPP liaison; provide payment for costs for space and administrative costs; provide supervision of the BHPP liaison; provide reports to HHSC; and comply with parameters concerning how long an NPMHP waiver is effective.

Proposed new §307.261 establishes which LMHA or LBHA employs a BHPP liaison based on the LMHA or LBHA serving the majority of counties in which the ESC is located and requires the LMHA or LBHA to consult with the other LMHA or LBHA in the same region before making the final hiring decision.

Proposed new §307.263 establishes responsibilities of a BHPP liaison for carrying out the functions and duties required of an NPMHP in accordance with Texas Education Code §8.155.

Proposed new §307.265 describes the HHSC waiver process for an LMHA or LBHA to employ an LMSW or LPC associate to serve as the BHPP liaison.

Proposed new §307.267 describes HHSC's written notification regarding if an LMHA's or LBHA's waiver request is approved or the opportunity to remedy and resubmit the waiver request if it was denied.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to implement legislation that does not specifically state that Section 2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner of Behavioral Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be to clarify provider expectations and broaden eligibility of NPMHPs through a waiver process to address workforce shortages and challenges in fulfilling statutory requirements for the safety and welfare of Texas residents.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there are no new fees or costs imposed on those required to comply. Funds are currently allocated for the relevant LMHAs/LBHAs to hire masters' level professionals as BHPP Liaisons for this program.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R073" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Education Code §8.152 which allows the Executive Commissioner to establish a waiver process for an LMHA to hire a person other than an NPMHP, if certain conditions are met, to provide mental health and substance use resources to school districts.

The new sections affect Texas Government Code §531.0055 and Texas Education Code §8.152.

§307.251. Purpose.

The purpose of this subchapter is to implement the Behavioral Health Partnership Program. This program delivers mental health and substance use resources to school districts served by a regional education service center and in which the local mental health authority (LMHA) or local behavioral health authority (LBHA) also delivers services. The program allows LMHAs and LBHAs to request a waiver to employ a professional who fulfills the duties outlined in Texas Education Code §8.152.

§307.253. Application.

The subchapter applies to local mental health authorities and local behavioral health authorities.

§307.255. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

(1) BHPP liaison--Behavioral Health Partnership Program liaison. For purposes of this subchapter, a "non-physician mental health professional" as referenced under Texas Education Code §8.152 is included in the term "behavioral health partnership program liaison."

(2) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code §662.021.

(3) Child--An individual under 18 years of age as defined under Texas Human Resources Code §42.002 and not emancipated as described in Texas Family Code Chapter 31.

(4) ESC--Regional education service center. An entity designated as the educational service center by the Texas Education Agency in accordance with Texas Education Code, Subtitle B, Chapter 8, Subchapter A.

(5) HHSC--Texas Health and Human Services Commission or its designee.

(6) LBHA--Local behavioral health authority. An entity designated as the local behavioral health authority by HHSC in accordance with Texas Health and Safety Code §533.0356.

(7) LMHA--Local mental health authority. An entity designated as the local mental health authority by HHSC in accordance with Texas Health and Safety Code §533.035(a).

(8) LMSW--Licensed master social worker. A person who holds a master social worker license in accordance with Texas Occupations Code Chapter 505.

(9) LPC associate--Licensed professional counselor associate. A person who holds a professional counselor associate license in accordance with 22 TAC §681.2 (relating to Definitions).

(10) NPMHP--Non-Physician Mental Health Professional.

(11) TAC--Texas Administrative Code.

§307.257. Behavioral Health Partnership Program Liaison Qualifications.

A BHPP liaison must meet the qualifications as an NPMHP under Texas Health and Safety Code §571.003 or serve under a waiver approved by HHSC in accordance with §307.267 of this subchapter (relating to Texas Health and Human Services Commission Notification).

§307.259. Local Mental Health Authority or Local Behavioral Health Authority Responsibilities.

(a) The LMHA or LBHA must:

(1) enter into a memorandum of understanding with the ESC to collaborate regarding the administration of this subchapter;

(2) employ a BHPP liaison to serve as a mental health and substance use resource for school districts located in the region served by an ESC and in which the LMHA or LBHA delivers services;

(3) pay the ESC a reasonable and negotiated cost-recovery fee, not to exceed \$15,000 per year unless the LMHA or LBHA and the ESC agree to a higher amount, for providing the space and administrative support necessary for the BHPP liaison to carry out the professional duties outlined in Texas Education Code §8.155;

(4) supervise the BHPP liaison;

(5) consult with any other LMHA or LBHA in the region and the regional ESC for input on supervising the BHPP liaison and coordinating services provided by the BHPP liaison;

(6) submit a written quarterly activity and evaluation report to the HHSC contract manager regarding the outcomes for school districts and students resulting from services delivered by a BHPP liaison in accordance with §307.263 of this subchapter (relating to Responsibilities of a Behavioral Health Partnership Program Liaison);

(7) submit a written annual activity and evaluation report to the HHSC contract manager regarding the outcomes for school districts and students resulting from services delivered by a BHPP liaison in accordance with Texas Education Code §8.153;

(8) submit a written waiver request to the BHPP mailbox and the HHSC contract manager if required under Texas Education Code §8.152(c);

(9) ensure an LMSW or an LPC associate is eligible for an HHSC waiver request as outlined in this subchapter and the LMSW or LPC associate has the ability to fulfill the duties outlined in this subchapter if a waiver is requested;

(10) retain documentation in accordance with the LMHA's and LBHA's policies and procedures on efforts made to hire an NPMHP before submitting a waiver request; and

(11) submit a new waiver request, as needed, if the HHSC BHPP liaison vacates the position.

(b) If a BHPP liaison vacates the position within one year of approval of the waiver under subsection (a)(11) of this section, a new waiver request is not required.

(c) If a BHPP liaison vacates the position more than a year after approval of the waiver under subsection (a)(11) of this section, the LMHA or LBHA must attempt to hire a professional pursuant to Texas Education Code §8.152 before requesting a waiver under subsection (a)(11) of this section.

§307.261. Determining which Local Mental Health Authority or Local Behavioral Health Authority Employs a Behavioral Health Partnership Program Liaison.

If two or more LMHAs or LBHAs deliver services in a region served by a regional ESC, the LMHA or LBHA serving the majority of counties in which the ESC is located is required to hire the BHPP liaison. The LMHA or LBHA must consult with the other LMHA or LBHA in the same region before making the final hiring decision.

§307.263. Responsibilities of a Behavioral Health Partnership Program Liaison.

(a) A BHPP liaison must:

(1) serve as a mental health and substance use resource for school districts located in the region served by a regional ESC in which the LMHA or LBHA provides services; and

(2) operate within the scope of their professional state license.

(b) A BHPP liaison is responsible for carrying out the following functions and duties required of an NPMHP in accordance with Texas Education Code §8.155:

(1) helping school district personnel gain awareness and a better understanding of mental health and co-occurring mental health and substance use disorders;

(2) assisting school district personnel to implement initiatives related to mental health or substance use under state law or agency rules, interagency memorandums of understanding, and related programs; and

(3) ensuring school district personnel are aware of:

(A) the list of recommended best practice-based programs and research-based practices developed under Texas Education Code §38.351;

(B) other public and private mental health and substance use prevention, treatment, and recovery programs available in the school district, including evidence-based programs delivered by an LMHA or LBHA and other public and private mental health resources, such as the Texas School Mental Health Resources database as required by Texas Education Code §38.253; and

(C) other available public and private mental health and substance use prevention, treatment, and recovery program resources administered by the LMHA or LBHA or HHSC to support school districts, students, and families;

(4) on a monthly basis, facilitating mental health first aid training;

(5) on a monthly basis, facilitating training on the effects of grief and trauma and providing support to children with intellectual or developmental disabilities who suffer from grief or trauma; and

(6) on a monthly basis, facilitating training on prevention and intervention programs that have been shown to be effective in helping students cope with pressures to:

(A) use alcohol, cigarettes, or illegal drugs; or

(B) misuse prescription drugs.

(c) A BHPP liaison employed under this subchapter must not treat or provide counseling to a student or provide advice to school district personnel regarding a specific student.

§307.265. Texas Health and Human Services Commission Waiver Process.

(a) If an LMHA or LBHA is unable to employ a person who qualifies as an NPMHP for the BHPP liaison position in its designated ESC, the LMHA or LBHA may request a waiver from the HHSC Executive Commissioner, or designee, to employ an LMSW or LPC associate to serve as the BHPP liaison, pursuant to Texas Education Code §8.152(c).

(b) To apply for a waiver, the LMHA or LBHA must complete and submit the written HHSC Local Mental and Behavioral Health Authority Waiver Request Form to the BHPP mailbox addressing the following information:

- (1) the name of the LMHA or LBHA requesting the waiver;
- (2) the name of LMHA's or LBHA's staff member's name and contact information;
- (3) the LMHA or LBHA's recruitment efforts to hire an NPMHP;
- (4) the duration of time the LMHA or LBHA was unable to hire for this position before requesting a waiver; and
- (5) the LMSW or LPC associate clinical licensure of the BHPP liaison waiver candidate.

§307.267. Texas Health and Human Services Commission Notification.

The HHSC Executive Commissioner or designee will deliver written notification to the LMHA or LBHA within ten business days after receipt of the submission regarding:

- (1) whether the waiver request is approved; or
- (2) the opportunity to remedy and resubmit the waiver request if the waiver request is denied.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 31, 2024.

TRD-202400343

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 243-4241



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES **SUBCHAPTER A. ACCREDITATION**

37 TAC §651.7

The Texas Forensic Science Commission ("Commission") proposes an amendment to rule to 37 Texas Administrative Code §651.7 to exempt from accreditation requirements, any College of American Pathologist (CAP)-accredited testing or Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services (SAMHSA/HHS)-certified testing limited to analysis of urine testing for approved classes of drugs on human specimens conducted by or under contract with a community supervision or corrections department of a county or municipality, the parole division of the Texas Department of Criminal Justice, the Board of Pardons and Paroles, or any other government agency. The results of such testing are subsequently entered into evidence in an action to revise or revoke the terms of an individual's bail, bond, community supervision, or parole. The Commission amendments are necessary to reflect a rule proposal made by the Commission at its January 26, 2024 quarterly meeting.

Reasoned Justification for Rule Amendments. The current exemption in §651.7(a)(17) does not expressly include bail or bond testing on human specimens conducted by or under contract with a community supervision or corrections department of a county or municipality, the parole division of the Texas Department of Criminal Justice, the Board of Pardons and Paroles, or any other government agency where the results of such testing are subsequently entered into evidence in an action to revise or revoke terms. The current rule only states that the exemption applies to community supervision or parole. The rule changes herein provide that clarity to criminal justice stakeholders which was the original intention of the rulemaking. The current rule does not state that the rule exemption applies to scenarios where such testing is used for pretrial diversion or intervention purposes. The rule changes add this language to provide that clarity to criminal justice stakeholders which was also the original intention of the rulemaking.

One-for-One Rule Requirement for Rules with a Fiscal Impact. Because Ms. Tomlin has determined that the rules do not have a fiscal impact that imposes a cost on a regulated person, including another state agency, a special district, or a local government, the agency is not required to take further action under Government Code § 2001.0045.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the amendments. The proposed amendments exempt certain types of drug testing performed for pre-trial, community supervision, and related services. The amendments do not impose any costs to state or local governments.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities. The proposed amendments exempt certain types of drug testing performed for pre-trial, community supervision, and related services.

Public Benefit/Cost Note. Ms. Tomlin has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit includes providing clarity to criminal justice stakeholders that forensic testing for pretrial,

community supervision, and related services are exempt from crime laboratory accreditation requirements.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because the rule does not impose any economic costs to these businesses. The proposed amendments exempt certain types of drug testing performed for pre-trial, community supervision, and related services.

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043. The proposed amendments exempt certain types of drug testing performed for pre-trial, community supervision, and related services.

Environmental Rule Analysis. Ms. Tomlin has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," as defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code 2001.221(b): 1) the proposed amendments do not create or eliminate a government program; 2) implementation of the proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed amendments do not increase or decrease future legislative appropriations to the agency; 4) the proposed amendments do not require a fee; 5) the proposed amendments do not create a new regulation; 6) the proposed amendments do not increase the number of individual's subject to regulation; and 7) the proposed amendments have a neutral effect on the state's economy. The amendments do not expand any accreditation or licensing requirement under the current programs, but rather clarify that forensic testing for pretrial, community supervision and related services are exempt from crime laboratory accreditation requirements.

Requirement for Rule Increasing Costs to Regulated Persons. Ms. Tomlin has determined that there are no anticipated increased costs to regulated persons as the proposed amendments do not impose any fees or costs.

Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by March 18, 2024, to be considered by the Commission.

Statutory Authority. The amendments are made in accordance with the Commission's accreditation authority under Code of Criminal Procedure, Art. 38.01 § 4-d(2), which establishes that

the Commission may modify or remove crime laboratory accreditation exemptions, and the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

Cross reference to statute. The proposal amends rule 37 Texas Administrative Code §651.7.

§651.7. Disciplines Exempt from Commission Accreditation Requirements by Administrative Rule.

(a) The Commission has exempted the following categories of forensic analysis from the accreditation requirement by administrative rule:

- (1) sexual assault examination of a person;
- (2) forensic anthropology, entomology, or botany;
- (3) environmental testing;
- (4) facial or traffic accident reconstruction;
- (5) serial number restoration;
- (6) polygraph examination;
- (7) voice stress, voiceprint, or similar voice analysis;
- (8) statement analysis;
- (9) forensic odontology for purposes of human identification or age assessment, not to include bite mark comparison related to patterned injuries;
- (10) testing and/or screening conducted for sexually transmitted diseases;
- (11) fire scene investigation, including but not limited to cause and origin determinations;
- (12) forensic photography;
- (13) non-criminal paternity testing;
- (14) non-criminal testing of human or nonhuman blood, urine, or tissue, including but not limited to workplace/employment drug testing;
- (15) the location, identification, collection, or preservation of physical evidence at a crime scene;
- (16) crime scene reconstruction;
- (17) confirmatory testing of a human specimen in a laboratory either accredited by the College of American Pathologists (CAP) forensic drug testing program, or certified by the Centers for Medicare and Medicaid Services of the Department of Health and Human Services (HHS/CMS) under the Clinical Laboratory Improvement Amendments of 1988 (CLIA), or the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services (SAMHSA/HHS) limited to analysis of urine testing for approved classes of drugs. This is for the purposes of referring, offering, or making available treatment, diversion, intervention, or monitoring[;] conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, [or] the Board of Pardons and Paroles, or another governmental entity. [and the] The results of such testing are subsequently entered into evidence in an action to revise or revoke the terms of an individual's bail, bond, community supervision, or parole;
- (18) document examination, including document authentication, physical comparison, and product determination;

(19) other evidence processing or handling that is excluded under §651.2(2) of this title (relating to Definitions); or

(20) determination of National Integrated Ballistic Information Network (NIBIN) suitability limited to triaging or grouping multiple items of evidence for NIBIN entry and assessing a set of test fires for purposes of NIBIN entry[,] as well as corresponding NIBIN entry. The suitability assessment may include test-firing, but only if no physical modification is made to the firearm other than what occurs during the act of test-firing the weapon, and subject to the condition that the test fire is for NIBIN suitability only and will not be used for comparison purposes or for determination of functionality.

(b) A request for exemption for any discipline not listed in this subsection shall be submitted in writing to the Commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 31, 2024.

TRD-202400380

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 936-0661



SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.202, §651.222

The Texas Forensic Science Commission (Commission) proposes amendments to 37 Texas Administrative Code §651.202, Definitions and §651.222, Voluntary Forensic Analyst Licensing Requirements Including Eligibility, License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration to change the minimum education requirement for a voluntary license for a document examination analyst from a high school diploma or equivalent degree or higher (*i.e.*, baccalaureate or advanced degree) to a baccalaureate or advanced degree or from an accredited university and to provide a definition of document examination.

Fiscal Note. Leigh M. Tomlin, Associate General Counsel of the Commission, has determined that for each year of the first five years the new rule is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. There is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the proposed rule amendments.

One-for-One Rule Requirement for Rules with a Fiscal Impact. Because Ms. Tomlin has determined that the rule amendments do not have a fiscal impact that imposes a cost on a regulated person, including another state agency, a special district, or a local government, the agency is not required to take further action under Government Code § 2001.0045.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the new rule does not

impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Ms. Tomlin has also determined that for each year of the first five years the rule amendments are in effect, the anticipated public benefit is clarity with regard to the scope of forensic activities covered in the forensic discipline of forensic document examination and better assurance of the quality and educational background of voluntarily licensed forensic document examiners in the State.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Ms. Tomlin has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or crime laboratory.

Government Growth Impact Statement. Ms. Tomlin has determined that for the first five-year period, implementation of the proposed new rules will have no government growth impact. Pursuant to the analysis required by Government Code 2001.221(b): (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; (4) the proposed rule does not require any change in fees; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand, limit, or repeal an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule has no effect on the state's economy.

Probable Economic Costs to Persons Required to Comply with Proposal. Ms. Tomlin has determined for the first five-year period that the rules are in effect, there is no anticipated economic cost to persons who are required to comply with the proposed rules.

Takings Impact Assessment. Ms. Tomlin has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Environmental Rule Analysis. Ms. Tomlin has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Commission asserts that this proposed rule is not a "major environmental rule," as defined by Government Code § 2001.0225. As a result, the Commission asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

Request for Public Comment. The Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh.tomlin@fsc.texas.gov. Comments must be received by March 18, 2024, to be considered by the Commission.

Statutory Authority. The amendments are adopted under the Commission's general rulemaking authority provided in Code of Criminal Procedure, Article 38.01 § 3-a, its authority to regulate

forensic analysts under Article 38.01 § 4-a, under its authority to establish voluntary licensing programs for forensic examinations or tests not subject to accreditation requirements under Article 38.01 § 4-a(c). The adopted rules have been reviewed by legal counsel and found to be within the state agency's authority to adopt.

Cross-reference to statute. The adopted rules affect Tex. Code Crim. Proc. art. 38.01 §§ 4-a and 4-a(c).

§651.202. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Forensic analyst - Means a person who on behalf of a crime laboratory accredited under Article 38.01 §4-d, Code of Criminal Procedure, technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory. The term does not include a medical examiner or other forensic pathologist who is a licensed physician.

(2) Forensic analysis - Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(3) Forensic pathology - Includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(4) Accredited laboratory - Includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title (relating to List of Recognized Accrediting Bodies).

(5) Physical evidence - Has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(6) Accredited university - A college or university accredited by a national accrediting body recognized by the United States Department of Education, or a foreign university with a degree program(s) recognized as equivalent by the Commission.

(7) Professional Misconduct - Professional misconduct means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis.

(8) Technician - An individual who performs basic analytical functions under the supervision of a qualified analyst but does not evaluate data, reach conclusions or sign any report for court or investigative purposes shall be considered a technician under the disciplines set forth in this section, with the exception of a Firearms/Toolmarks Technician who may issue a report provided it is limited to a representation that a firearm was test-fired and/or cartridge cases were entered into the National Integrated Ballistics Information Network.

(9) Interpretation for toxicology - Interpretation is the consideration of dose-response relationships between drugs, alcohol or other compounds of interest and the resulting behavioral or physical changes to human performance, including the evaluation of pharmacokinetic and pharmacodynamics parameters. Examples include but are not limited to: calculation of dose or other pharmacokinetic calculations; determination of drug/drug interactions; determination (or reporting) of therapeutic, toxic, or lethal drug ranges; evaluation of drug

absorption, distribution, metabolism, or excretion; and determination of the effects (mental or physical).

(10) Crime scene reconstruction - is the application of the scientific method to evaluate information regarding a crime scene from all reasonably available sources such as scene documentation, investigative reports, physical evidence, laboratory reports, autopsy documentation, photographs, video, and witness statements. Crime Scene Reconstruction--as distinguished from crime scene processing or crime scene investigation--includes the application of analytical methods beyond general observations or opinions about the scene to identify and test hypotheses.

(11) Latent print examination - Includes the forensic examination of friction ridge detail from the hands and feet.

(12) Latent print processing - Includes identifying and collecting latent prints from items obtained at a crime scene utilizing appropriate optical, physical, and/or chemical techniques with sequential processing to develop latent, patent, and/or plastic prints from a substrate.

(13) ~~[(12)]~~ Forensic anthropology - Includes the application of anthropological methods and theory, particularly those relating to the recovery and analysis of human remains.

(14) Document Examination - includes the scientific examinations, analyses, and comparisons of documents in order to determine the origin, authenticity and authorship.

§651.222. *Voluntary Licensure Forensic Analyst and Technician Licensing Requirements, Including Eligibility, License Term, Fee and Procedure for Denial of Initial Application or Renewal Application and Reconsideration.*

(a) Issuance. The Commission may issue an individual's forensic analyst or technician license for forensic examinations or tests not subject to accreditation under this section.

(b) Voluntary. Licensure under this section is voluntary and is not a prerequisite for practice in any of the forensic disciplines listed in this section.

(c) The following forensic disciplines are eligible for a forensic analyst or forensic technician license under this section:

(1) forensic anthropology;

(2) document examination, including document authentication, physical comparison, qualitative determination, and recovery [product determination];

(3) latent print examination, including the forensic examination of friction ridge detail from the hands and feet;

(4) digital/multimedia evidence (limited to computer, mobile, vehicle, call detail records (*i.e.*, phone carrier record comparisons to mobile device), and location detail records); and

(d) Application. Before being issued a forensic analyst license, an applicant shall complete and submit to the Commission a current forensic analyst license application and provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(e) Minimum Education Requirements.

(1) Document Examination Analyst. An applicant for a forensic analyst license in document examination must have a baccalaureate or advanced degree from an accredited university [high school diploma or equivalent degree] or higher [*i.e.*, baccalaureate or advanced degree].

(2) Forensic Anthropologist. An applicant for a forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any minimum education requirements required to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(3) Latent Print Analyst. An applicant for a forensic analyst license in latent print examination must have:

(A) A baccalaureate or advanced degree from an accredited university;

(B) 3 years of experience in latent print examination with an Associates of Arts or Associates of Science; or

(C) 4 years of experience in latent print examination and 176 hours of training that includes 16 hours of testimonial training (with only a maximum of 80 conference hours accepted as training hours).

(4) Digital/Multimedia Evidence Analyst. An applicant for a forensic analyst license in digital/multimedia evidence must have:

(A) a baccalaureate or advanced degree from an accredited university;

(B) a non-law enforcement or non-military background without a baccalaureate degree, demonstrating equivalent digital skill set through Certified Forensic Computer Examiner (CFCE), Global Information Assurance Certified Forensic Examination (GCFE), or Global Information Assurance Certification Certified Forensic Analyst (GCFA) or equivalent non-vendor certification examination(s) with competency test(s); or

(C) law enforcement or military experience equivalent demonstrated through forensic training through one of the following organizations: SysAdmin, Audit, Network, and Security (SANS), International Association for Computer Investigative Specialists (IACIS), National White Collar Crime Center (NW3C), Law Enforcement & Emergency Services Video Association International, Inc. (LEVA), U.S. Military, Computer Analysis Response Team (CART) (FBI Training), Seized Computer Evidence Recovery Specialist (SCERS), or U.S. Secret Service.

(5) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(f) Specific Coursework Requirements and Certification Requirements.

(1) General Requirement for Statistics. With the exception of the categories of licensure specifically exempt in this sub-section, an applicant for any forensic analyst license under this section must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Forensic Discipline-Specific Coursework Requirements.

(A) Document Examination Analyst. An applicant for a forensic analyst license in document examination must have a three-semester credit hour (or equivalent) college-level statistics course from

an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(B) Forensic Anthropologist. An applicant for a forensic analyst license in forensic anthropology must be certified by the American Board of Forensic Anthropology (ABFA), including fulfillment of any specific coursework requirements required to comply with and maintain ABFA certification at the time of the candidate's application for a license.

(C) Latent Print Analyst.

(i) An applicant for a forensic analyst license in latent print examination who qualifies for a latent print analyst license based on the minimum education requirements forth in subsection (d)(3)(A) or (B) of this section must have a minimum of 24 semester-credit hours or equivalent in science, technology, engineering, or mathematics (STEM) related coursework.

(ii) All applicants for a forensic analyst license in latent print examination must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(iii) IAI Certification Requirement for Unaccredited Laboratory. All licensed latent print examination analysts and applicants who are not employed by a laboratory accredited by the Commission are required to be certified by the International Association for Identification (IAI) under the IAI's Latent Print Certification program and are required to provide proof of certification upon request. Licensees are required to notify the Commission of any change in the status of their IAI certification within ten (10) business days of any changes.

(D) Digital/Multimedia Evidence Analyst. An applicant for a forensic analyst license in digital/multimedia evidence must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(3) Exemptions from Specific Coursework Requirements. Previously Licensed Document Examination Analyst Exemption. An applicant for a voluntary forensic analyst license previously licensed by the Commission when licensure was mandatory for the discipline is exempt from any specific coursework requirements in this subsection.

(g) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a forensic analyst license under this section must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of sup-

port from their employing agency's director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(2) Credit for Pilot Exam. If an individual passes a Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a voluntary or mandatory Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this subsection.

(h) Proficiency Monitoring Requirement.

(1) Requirement for Applicants Employed by an Accredited Laboratory. An applicant who is employed by an accredited laboratory must demonstrate the applicant participates in the laboratory's process for intra agency [~~intra-laboratory~~] comparison, interagency [~~interagency-laboratory~~] comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory's accrediting body's proficiency monitoring requirements as applicable to the Forensic Analyst's or Forensic Technician's specific forensic discipline and job duties.

(2) Requirement for Applicants Not Employed at an Accredited Laboratory or at an Accredited Laboratory in an Unaccredited Forensic Discipline. An applicant who is employed by an entity other than an accredited laboratory or performs a forensic examination or test at an accredited laboratory in a forensic discipline not covered by the scope of the laboratory's accreditation must demonstrate the applicant participates in the laboratory or employing entity's process for intraagency comparison, interagency comparison, proficiency testing, or observation-based performance monitoring requirements in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring as applicable to the Forensic Analyst's or Forensic Technician's specific forensic discipline and job duties.

(3) A signed certification by the laboratory or entity's authorized representative that the applicant has satisfied the applicable proficiency monitoring requirements, including any intraagency comparison, interagency comparisons, proficiency testing, or observation-based performance monitoring requirements in paragraph (1) or (2) of this subsection as of the date of the analyst's application must be provided on the Proficiency Monitoring Certification form provided by the Commission. The licensee's authorized representative must designate the specific forensic discipline in which the Forensic Analyst or Forensic Technician actively performs forensic casework or is currently authorized to perform supervised or independent casework.

(4) Applicants employed by an entity other than an accredited laboratory or performing forensic examinations or tests at an accredited laboratory in a discipline not covered by the scope of the laboratory or employing entity's accreditation must include written proof of the Forensic Science Commission's approval described in paragraph (5) of this subsection with the Proficiency Monitoring Certification form required in paragraph (3) of this subsection. The applicant must include written documentation of performance in conformance with expected consensus results for the laboratory or employing entity's Commission-approved activities or exercise(s) as applicable to the applicant's specific forensic discipline and job duties in compliance with and on the timeline set forth by the laboratory or employing entity's Commission-approved process for proficiency monitoring.

(5) Applicants employed by an entity other than an accredited laboratory or performing forensic examinations or tests at an accredited laboratory in a discipline not covered by the scope of the laboratory or employing entity's accreditation seeking approval of proficiency monitoring activities or exercise(s) must seek prior approval of the activities or exercise(s) from the Commission.

(6) Special Proficiency Testing Requirements for Latent Print Analysts.

(A) Where available and appropriate for the job function(s) being tested, proficiency tests shall be obtained from an external source through participation in a proficiency testing program offered by a provider accredited to the ISO/IEC 17043 international standard.

(B) Where not available or not appropriate for the job function(s) being tested, proficiency tests may be obtained from an external source through participation in an interagency comparison or developed internally by the employing laboratory or entity through participation in an interagency comparison or intraagency comparison.

(C) All latent print examiner proficiency tests selected shall be developed and validated in accordance with the requirements set forth in Sections 4.2 and 4.3 of the Organization of Scientific Area Committees for Forensic Science (OSAC) 2022-S-0012 Friction Ridge Subcommittee's Standard for Proficiency Testing in Friction Ridge Examination.

(7) Special Proficiency Testing Requirements for Crime Scene Processing Technicians, Crime Scene Investigation Analysts, and Crime Scene Reconstruction Analysts.

(A) Where available and appropriate for the job function(s) being tested, proficiency tests shall be obtained from an external source through participation in a proficiency testing program offered by a provider accredited to the ISO/IEC 17043 international standard.

(B) Where not available or not appropriate for the job function(s) being tested, proficiency tests may be obtained from an external source through participation in an interagency comparison or developed internally by the employing laboratory or entity through participation in an interagency comparison or intraagency comparison.

(i) Employing Laboratory or Agency Quality Requirement for Forensic Analysts. Applicants for a forensic analyst license under this section must be employed by a laboratory or agency that can demonstrate, regardless of Commission accreditation status, compliance with specific standards as applicable to the applicant's forensic discipline as published on the Commission's website and updated January 15 of each calendar year.

(j) License Term and Fee.

(1) A Forensic Analyst license issued under this section shall expire on the last day of the applicant's birth month that occurs on the second birthdate occurring after the application is granted [~~two years from the date the applicant is granted a license~~].

(2) Application Fee. A Forensic Analyst or Forensic Technician license applicant or current licensee under this section shall pay the following fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Crime Scene Investigation Analysts;

(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Crime Scene Investigation Analysts;

(C) License Reinstatement fee of \$220; or

(D) Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts.

(k) Forensic Analyst License Renewal. Renewal of a Forensic Analyst License. Applicants for renewal of a Forensic Analyst License must comply with §651.208 (Forensic Analyst and Forensic Technician License Renewal) of this subchapter.

(l) Forensic Analyst License Expiration and Reinstatement. Expiration and Reinstatement of a Forensic Analyst License. A Forensic Analyst must comply with §651.209 of this subchapter (Forensic Analyst and Forensic Technician License Expiration and Reinstatement).

(m) Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each initial application or renewal application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter. If a person who has applied for a forensic analyst license under this section does not meet the qualifications or requirements set forth in this subchapter and has submitted a complete application, the Director or Designee must consult with members of the Licensing Advisory Committee before denying the application.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an initial or renewal application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the initial or renewal application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 5, 2024.

TRD-202400426

Leigh Tomlin

Associate General Counsel

Texas Forensic Science Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 936-0661



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EMPLOYMENT AND TRAINING

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T):

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 813 rule change is to amend rule language to conform with SNAP provisions of the Fiscal Responsibility Act of 2023, revise references to the case management system, and update the allowable activities for able-bodied adults without dependents (ABAWDs).

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has conducted a rule review of Chapter 813, Supplemental Nutrition Assistance Program Employment and Training, and any resulting changes are described in Part II of this preamble.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§813.1. Purpose

Section 813.1 updates the SNAP purpose to align with the Fiscal Responsibility Act of 2023.

§813.2. Definitions

Section 813.2 extends the age range of ABAWDs to align with the Fiscal Responsibility Act of 2023.

§813.5. Documentation, Verification, and Supervision of Work Activities

Section 813.5 updates language related to TWC's case management system.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

TWC proposes the following amendments to Subchapter D:

§813.32. SNAP E&T Activities for ABAWDs

Section 813.32 adds work experience as an allowable activity for ABAWDs.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to amend the Chapter 813 SNAP E&T rules to conform with the Fiscal Responsibility Act of 2023, revise references to the case management system, and update the allowable activities for ABAWDs.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to align Chapter 813 legislation with federal legislation.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

This rulemaking is in direct response to SNAP provisions added by the Fiscal Responsibility Act of 2023. The federal action made it necessary for TWC to amend Chapter 813 to conform with the updated federal rules.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than March 18, 2024.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§813.1, 813.2, 813.5

STATUTORY AUTHORITY

The rules are proposed under the authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement provisions of the federal Fiscal Responsibility Act of 2023 by making conforming changes to TWC rules regarding Supplemental Nutrition Assistance Program Employment and Training.

§813.1. Purpose.

The purpose of Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities and support services is to assist SNAP recipients who are not receiving Temporary Assistance for Needy Families in entering employment and increasing their earnings through participation in allowable job search, training, education,

or workfare activities that promote self-sufficiency. These rules may be cited as the SNAP E&T rules.

§813.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) ABAWD--a SNAP household member who is determined by the Texas Health and Human Services Commission to be a mandatory work registrant and is:

(A) classified as an able-bodied adult;

(B) within the age range specified in 7 USC §2015(o)(3) [at least 18 but less than 50 years of age];

(C) without dependents; and

(D) subject to a limitation on the receipt of SNAP benefits for three months out of 36 months if the person does not work at least 20 hours per week or participate in employment and training activities as specified in 7 USC [U.S.C.] §2015(o)(2)(A) - (B).

(2) Exempt recipient--an individual who is part of the General Population, is not required to participate in SNAP E&T services, as set forth in 7 USC [U.S.C.] §2015(d)(2), and shall not be sanctioned for failure to cooperate with SNAP E&T requirements as set forth in §813.12 of this chapter.

(3) Full-service counties--counties in which Boards ensure that:

(A) ABAWDs, who are not working at least 20 hours per week, are outreached and receive SNAP E&T services;

(B) the SNAP E&T General Population receives SNAP E&T services based on available funding;

(C) mandatory work registrants shall be sanctioned (that is [i.e.], SNAP benefits are denied) for failure to cooperate with SNAP E&T requirements; and

(D) exempt recipients who voluntarily participate in SNAP E&T services shall not be sanctioned for failure to cooperate with SNAP E&T requirements.

(4) General Population--a mandatory or exempt SNAP household member who is:

(A) at least 16 but less than 60 years of age; and

(B) not classified as an ABAWD.

(5) HHSC--the Texas Health and Human Services Commission.

(6) Mandatory work registrant--a SNAP household member who is required to register for SNAP E&T services, and is:

(A) classified as General Population; or

(B) an ABAWD.

(7) Minimum-service counties--counties in which:

(A) SNAP recipients (that is [i.e.], mandatory or exempt) may volunteer to participate in SNAP E&T services;

(B) Boards may provide services to SNAP recipients based on available funds;

(C) outreach is not conducted; and

(D) SNAP recipients (that is [i.e.], mandatory or exempt) who voluntarily participate in SNAP E&T services shall not be sanctioned for failure to cooperate with SNAP E&T requirements.

(8) Nonprofit organization--any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve, or expand its operations.

(9) SNAP E&T activities--Supplemental Nutrition Assistance Program Employment and Training activities as specified in §813.31 of this chapter.

(10) SNAP E&T support services--Supplemental Nutrition Assistance Program Employment and Training support services as specified in §813.41 of this chapter.

(11) Volunteer--an individual who is not required to participate, but who voluntarily participates, in SNAP E&T services, including:

(A) exempt recipients in full-service counties; and

(B) exempt recipients and mandatory work registrants in minimum-service counties.

(12) Workfare--a work-based activity that consists of placement of an ABAWD with a public or private nonprofit entity in an unpaid job assignment for the number of hours per month equal to an ABAWD's monthly household SNAP allotment amount divided by the federal minimum wage.

§813.5. *Documentation, Verification, and Supervision of Work Activities.*

(a) A Board shall ensure that all required information related to the documentation and verification of participation in SNAP E&T work activities, as described in this section, is documented in the case management system [~~The Workforce Information System of Texas (TWIST)~~].

(b) A Board shall ensure that all participation in SNAP E&T is verified and documented and that self-attestation is not allowed.

(c) For the activity described in §813.31(5) of this chapter, Boards shall ensure that all participation is verified and documented in the case management system [TWIST] at least monthly.

(d) For the activities described in §813.31(1) and (4) and §813.32(a)(4) of this chapter, Boards shall ensure that all participation is:

(1) supervised daily; and

(2) verified and documented in the case management system [TWIST] at least monthly.

(e) For the activities described in §813.31(2) and (3) of this chapter, Boards shall ensure that:

(1) no more than one hour of unsupervised study or homework time per each hour of class time is counted toward participation in SNAP E&T;

(2) all study and homework time in excess of one hour per hour of class time is directly monitored, supervised, verified, and documented;

(3) study or homework time is only counted toward participation in SNAP E&T if:

(A) the study or homework time is directly correlated to the demands of the coursework for out-of-class preparation as described by the educational institution; and

(B) the educational institution's policy requires a certain number of out-of-class preparation hours for the class;

(4) good or satisfactory progress, as determined by the educational institution, is verified and documented in the case management system [TWIST] at least monthly;

(5) all participation in SNAP E&T is supervised daily; and

(6) all participation in SNAP E&T is verified and documented in the case management system [TWIST] at least monthly.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2024.

TRD-202400334

Les Trobman

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: March 17, 2024

For further information, please call: (512) 850-8356



SUBCHAPTER D. ALLOWABLE ACTIVITIES

40 TAC §813.32

The rules are proposed under the authority of Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules implement provisions of the federal Fiscal Responsibility Act of 2023 by making conforming changes to TWC rules regarding Supplemental Nutrition Assistance Program Employment and Training.

§813.32. *SNAP E&T Activities for ABAWDs.*

(a) Boards shall ensure that SNAP E&T activities for ABAWDs are limited to participating in the following:

(1) Services or activities under the Trade Act of 1974, as amended by the Trade Act of 2002

(2) Activities under Workforce Innovation and Opportunity Act (29 USC §3111 et seq.)

(3) Education and training, which may include:

(A) vocational training as described in §813.31(2) of this subchapter; or

(B) nonvocational education as described in §813.31(3) of this subchapter; and

(4) Workfare activities that shall:

(A) be designed to improve the employability of ABAWDs through actual employment experience or training, or both;

(B) be unpaid job assignments based in the public or private nonprofit sectors;

(C) have hourly requirements based on the ABAWD's monthly household SNAP allotment divided by the number of ABAWDs in the SNAP household, as provided by HHSC and then divided by the federal minimum wage; and

(D) include a four-week job search period before placement in a workfare activity.

(5) Work experience as described in §813.31(4) of this subchapter.

(b) Boards shall ensure that ABAWDs who are referred to a Workforce Solutions Office and subsequently become engaged in unsubsidized employment for at least 20 hours per week are not required to continue participation in SNAP E&T services because they have fulfilled their work requirement, as described in 7 USC §2015(o)(2)(A). Additionally, Boards shall ensure that HHSC is notified when ABAWDs obtain employment.

(c) An employment and training program for veterans operated by the US Department of Labor or the US Department of Veterans Affairs, as tracked by HHSC, is an allowable SNAP E&T activity for ABAWDs.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2024.

TRD-202400335

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